TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~285.~~ 88

ALFRED E. TILTON AND CHARLES E. TILTON, APPELLANTS,

vs.

JOSEPH B. COFIELD, DANIEL WITTER, RICHARD E. WHITSITT, AMOS STECK, JOHN ROCHE, E. F. HALLECK, AND CHARLES HALLECK.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF COLORADO.

FILED OCTOBER 3, 1874.

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vs.

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1 In the supreme court of the Territory of Colorado.

Pleas before the judges of the supreme court of the Territory of Colorado, at the city of Denver, in the county of Arapahoe, at the February term of said court, held in said city on the second Tuesday of February, one thousand eight hundred and seventy-four.

Witness the honorable Moses Hallett, chief-justice of said court.

JNO. W. WEBSTER, *Clerk.*

2 ALFRED E. TILTON AND CHARLES E. Tilton, impleaded with David J. Cook, Judson H. Dudley, and John Alexander, appellants,
vs.
JOSEPH B. COFIELD, DANIEL WITTER, Richard E. Whitsitt, Erastus F. Hallack, Charles Hallack, and John Roche, appellees.
} Appeal from supreme court of Colorado Territory.

Be it remembered that heretofore, to wit, on the eleventh day of February, A. D. 1874, there was filed in the clerk's office of the supreme court of the Territory of Colorado a transcript of the orders made
3 in this case by the district court of the first judicial district of the Territory of Colorado, within and for the county of Arapahoe, which said transcript of the record from the court below is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Arapahoe, ss :

Pleas in the district court of the first judicial district of Colorado Territory, in and for the said county, before the honorable Christian S. Eyster, associate justice of the supreme court of said Territory, assigned to said judicial district at a regular term thereof, begun and held at the court-house in Denver, in said county, on the third Tuesday, (it being the eighteenth day of January, A. D. 1870,) eighteen hundred and seventy.

Present, Hon. Christian S. Eyster, judge of said court; Oliver A. Whittemore, esq., clerk of said court; Vincent D. Markham, esq., district attorney of said district; and David J. Cook, esq., sheriff of said county.

4 IN THE MATTER OF JOSEPH B. COFIELD, Daniel Witter, Richard E. Whitsitt, John Roche, Erastus F. Halleck, Charles Halleck, and Amos Steck,
vs.
ALFRED E. TILTON, CHARLES E. TILTON, Judson H. Dudley, David J. Cook, and John Alexander.
} In chancery. G. D. No. 1773.

5 Be it remembered that on the 25th day of November, A. D. 1869, came the said complainants, Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, and Amos Steck, by their solicitors, and filed in the office of the clerk of said court their certain bill of complaint in this behalf against the said Alfred E. Tilton and Charles E. Tilton. Whereupon summons was issued out of said court and under the seal thereof against the said Alfred E. Tilton and Charles E. Tilton, which said summons is in the words and figures following, to wit:

TERRITORY OF COLORADO,
County of Arapahoe, ss:

The people of the Territory of Colorado to the sheriff of Arapahoe County, greeting:

We command you to summon Alfred E. Tilton and Charles E. Tilton, if they shall be found in your county, personally to be and appear before the district court of said county on the first day of the next term thereof, to be holden at the court-house in the city of Denver, in said Arapahoe County, on the third Tuesday of January next, A. D. 1870, to answer unto Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, and Amos Steck, plaintiffs, in a certain bill of complaint for injunction relief as prayed for in said bill of complaint filed in the said court, on the chancery side thereof. And have you then and there this writ, with a return thereon showing in what manner you have executed
6 the same.

Witness O. A. Whittemore, clerk of the district court of said county, and the seal thereof, at said Denver, this twenty-fifth day of November, A. D. 1869.

SEAL OF DISTRICT COURT, ARAPAHOE COUNTY, COLORADO.

OLIVER A. WHITTEMORE, *Clerk.*

(Endorsed:) G. D. No. 1773. Chancery summons. District court. In the matter of J. B. Cofield et als. vs. A. E. & C. E. Tilton. January term, 1870.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I have duly executed the within by reading the same to the within-named defendant, Charles E. Tilton, the twenty-fifth day of November, A. D. 1869. Alfred E. Tilton not found in my county. Returned this January 17th, 1870.

D. J. COOK, *Sheriff.*

Fees: Service, $1.50; mileage, .80; return, 2.30.

Filed in this court this 17th day of January, 1870. Oliver A. Whittemore, clerk.

And afterwards, to wit, on the 3d day of December, A. D. 1869, the said bill of complaint, so as aforesaid herein filed, was by leave of the court withdrawn from the files of said court.

And thereupon, afterwards, and on the 7th day of December, A. D. 1869, came the said Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, and Amos Steck, together with Erastus F. Halleck, Charles Halleck, and John Roche, and filed in said court their certain other bill of complaint in this behalf against the said defendants Alfred E. Tilton and Charles E. Tilton, as well as against David J. Cook, Judson H. Dudley, and John Alexander, and the said bill of complaint is in words and figures as follows, to wit:

7 In the district court of the first judicial district of Colorado Territory, sitting within and for the county of Arapahoe. To January term, 1865.

THE TERRITORY OF COLORADO,
County of Arapahoe:

To the Hon. Christian S. Eyster, associate justice, &c., and judge of the district court of the first judicial district of Colorado Territory, & for Arapahoe County, in chancery:

The complainants Joseph B. Cofield, Daniel Witter, Richard E. Whit-

sitt, Amos Steck, John Roche, and Erastus F. Halleck, and Charles Halleck complain of Alfred E. Tilton, Charles E. Tilton, David J. Cook, Judson H. Dudley, and John Alexander, whom your orators pray may be made parties defendants to this their bill of complaint, and respectfully represent unto your honor that, on the 28th day of August, A. D. 1865, the said defendants A. E. and C. E. Tilton, who were copartners trading and doing business under the firm-name and style of A. E. & C. E. Tilton, by their agent, Alexander Davidson, filed an affidavit in attachment against Judson H. Dudley and Thomas P. Ames, copartners, trading and doing business under the firm-name & style of Dudley & Ames, for an attachment of the property of the said Dudley and Ames to satisfy a claim or demand of the said A. E. and C. E. Tilton in the sum of two thousand six hundred and twenty dollars and eighty cents for goods, wares, and merchandise thereto-
8 fore sold and delivered to the *to the* said Dudley and Ames, which affidavit was filed in the district court of the first judicial district of the Territory of Colorado for Arapahoe County, on the said 28th day of August, A. D. 1865; a copy of which affidavit is hereto attached, marked "Exhibit A," and which your orators pray may be made a part of this their bill of complaint.

And thereupon, upon filing with the clerk of said court a satisfactory bond, as was required by law, the said clerk issued a writ of attachment directing the sheriff of Arapahoe County, in said Territory, to attach so much of the real and personal estate of the said Dudley & Ames to be found in said county as should be of sufficient value to satisfy the demand of said plaintiffs A. E. & C. E. Tilton, in said affidavit mentioned, and the costs of suit, which said writ of attachment was delivered to the sheriff of said county, to be executed by him; a copy of which writ is hereto attached, marked "Exhibit B," and your orators pray may be made a part of this bill of complaint.

And the said sheriff, in & by virtue of the authority in said writ contained, levied upon the following-described lots or parcels of land, to wit, lots 5 & 6, in block 94; lots 11 & 12, 29 & 30, in block 78; lots 15 & 16, in block 62; lots 13 & 14, in block 129; lots 25 & 26, in block 209; lots 11 & 12, in block 194; lots 21 & 22, in block 175; lots 27 & 28, in block 159; lots 5 & 6, in block 137; lots 17 & 18, in block 11; lots 7 & 8 in block 6, & lot 31 in block one hundred and twenty-seven,
9 (127,) all situate in the east division of the city of Denver, and marked and numbered as above set forth on the plat of said city; also, lots 7, in block 63; lot 4, in block 41; lot 8, in block 65; lot 2, in block 40, and lot 8, in block 63, situate in the west division of the city of Denver, according to the plat of said city, reference to which will fully appear, which said levy was made by the said sheriff on the 28th day of August, A. D. 1865, on said lots as the property of the said Judson H. Dudley, and is endorsed on said writ; a copy of which endorsement is set forth on exhibit marked "B," and which your orators pray may be made part of this their bill of complaint.

And your orators further show unto your honors that the said A. E. & C. E. Tilton, by their attorneys, Cavanaugh & Butler, on the 25th day of November, A. D. 1865, filed in the said court their declaration in said cause against the said defendants Dudley and Ames, and claimed damages against them in the sum of three thousand dollars, a copy of which declaration in said suit is hereto attached, marked "Exhibit C," and which your orators pray may be made part of this bill of complaint. And your orators, further complaining, show that the complainants, Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, and Amos Steck

purchased from the said Judson H. Dudley all the lots or parcels of land levied upon by virtue of the writ of attachment aforesaid, except lots number 5 & 6, in block 137, and lots 17 & 18, in block 11, situate in the east division of the city of Denver, and also excepting lots numbered 8, in block 65, and lot numbered 2, in block 40, situate in the west division of said city of Denver, and paid to the said Judson H. Dudley for said lots so purchased (together with other lots or parcels of land) the sum of five thousand and one hundred dollars, lawful money of the United States, and thereupon the said Dudley, through David H. Moffatt. jr., conveyed the said lots or parcels of land to the complainants, Cofield, Witter, and Whitsitt, by deed dated the 23d day of May, A. D. 1867. And your orators further represent that the sale of the said lots or parcels of land in said deed of conveyance mentioned was made by David H. Moffatt, jr., as the agent or attorney in fact of the said Dudley, to whom the said several lots or parcels of land were conveyed by the said Dudley on the 9th day of March, A. D. 1867, through one Charles G. Chever, then acting as attorney in fact for the said Dudley, as security, as your orators are informed and believe, for the sum of two thousand and five hundred dollars loaned by the said Moffat to the said Dudley. And the said Moffat, as your orators are informed and believe, held said lots so conveyed as trustee for the said Dudley under the deed of conveyance aforesaid, subject to the payment of the said two thousand and five hundred dollars and the accrued interest thereon.

And your orators further show unto your honor that the said deed of conveyance of the said several lots or parcels of land was executed at the instance of and with the consent of said Dudley, and was delivered to the said complainants Cofield, Witter, & Whitsitt on the 23d day of May, A. D. 1867, and the said Whitsitt, acting for the complainant Amos Steck, held the legal title to the undivided one-third part of said lots or parcels of land in his own name, with the consent of said Steck, as trustee for the one-half of the legal interest of said Whitsitt in the same.

And your orators further show that the said deed of conveyance so executed and delivered to the complainants Cofield, Witter, & Whitsitt by the said Moffatt, acting for and in behalf of the said Dudley, was duly recorded in the office of the recorder of deeds of Arapahoe County aforesaid on the 23d day of May, A. D. 1867, of which recording the said A. E. & C. E. Tilton and their attorneys had notice; a copy of which deed of conveyance is hereto attached, marked "Exhibit D," and which your orators pray may be made part of this complaint.

And your orators further show unto your honor that on the 24th day of July, A. D. 1868, the said Whitsitt, by his deed of conveyance of that date, conveyed to the complainant Steck the one undivided sixth part or portion of the following-described lots, amongst others, in said conveyance mentioned, to wit: Lots 5 & 6, in block 94; lots 29 & 30, in block 78; lots 25 & 26, block 209; lots 11 & 12, block 194; lots 21 & 22, block 175; lots 27 & 28, block 159; lots 7 & 8, block 6; lot 31, block 127, situate in the east division of said city of Denver; and also the undivided one-fourth part or portion of lots 11 & 12, in block 78; and lots 13 & 14, in block one hundred and twenty-nine, (129,) situate in the east division of the city of Denver; and also the undivided one-sixth part or portion of lots 7 & 8, in block 63; and lot 4, in block forty-one, (41,) situate in the west division of the said city of Denver; a copy of which deed of conveyance is hereto attached, marked "Exhibit E," and your orators pray may be made part of this bill of complaint.

And your orators further show unto your honor that the said complainants Cofield, Witter, & Whitsitt, with the consent of said Steck, sold and conveyed lots 15 & 16, in block 62, in the east division of said city of Denver, to one John G. Jager, by their deed of conveyance dated the 8th day of October, A. D. 1867, and in said deed of conveyance covenanted with the said Jager, his heirs, and assigns, to warrant and forever defend them in the quiet and peaceable possession of the said conveyed premises against the claim of all and every person lawfully claiming, or to claim, the same or any part thereof.

And your orators further show unto your honor that the complainant Cofield, ever since the 23d day of May, A. D. 1867, owned and was entitled to the possession of the undivided one-third part or portion of the following lots or parcels of land, and is now the
13 owner of and entitled to the possession of the one undivided one-third part or portion of the same, to wit: Lots 5 & 6, in block 94; lots 29 & 30, in block 78; lots 25 & 26, in block 209; lots 11 & 12, in block 194; lots 21 & 22, in block 175; lots 27 & 28, in block 159; lots 7 & 8, in block 6; lot 31, in block 127, situate in the eastern division of the said city of Denver; also, lots 7 & 8, in block 63, situate in the west division of the city of Denver.

And your orators further represent that the complainant Daniel Witter, ever since the 23d day of May, A. D. 1867, owned and was entitled to the pos'session of the undivided one-third part or portion of the following lots or parcels of land, and is now the owner of and entitled to the possession of the same as aforesaid, to wit: Lots 5 & 6, in block 94; lots 29 & 30, in block 78; lots 25 & 26, in block 209; lots 11 & 12, in block 194; lots 21 & 22, in block 175; lots 27 & 28, in block 159; lots 7 & 8, in block 6; lot 31, in block 127, situate in the eastern division of the said city of Denver, and also of lots 7 & 8, in block 63, in the west division of the said city of Denver.

And your orators further show that the complainant, Daniel Witter, was the owner of and entitled to the possession of the undivided one-third part or portion of lots 11 & 12 in block 78, and lots 13 & 14 in block numbered 129, in the east division of the city of Denver, from the 23d day of May, A. D. 1867, up to the 16th day of August, A. D. 1867, at which last-mentioned time the complainant Cofield conveyed
14 to said Witter and Whitsitt all his interest in said lots 11 & 12 in block 78, and 13 & 14 in block 129, aforesaid. And your orators further show that the said Witter, since the 16th day of August, A. D. 1867, the date of the conveyance from said Cofield to Witter and Whitsitt, was and is now the owner of and entitled to the possession of the undivided one-half part or portion of said lots 11 & 12 in block 78, and lots 13 & 14 in block 129, aforesaid.

And your orators further show unto your honor that the complainants Whitsitt and Steck were each owners of and entitled to the possession of the undivided one-sixth portion or part of the following-described lots or parcels of land since the 23d day of May, A. D. 1867, and are now the owners of and entitled to the possession of the undivided one-sixth part or portion of the same, to wit: Lots 5 & 6, in block 94; lots 29 & 30, in block 78; lots 25 & 26, in block 209; lots 11 & 12, in block 194; lots 21 & 22, in block 175; lots 27 & 28, in block 159; lots 7 & 8, in block 6; lot 31, in block 127, situate in the east division of the city of Denver aforesaid. And your orators further show that the said Whitsitt and Steck, each, were the owners of and entitled to the possession of the undivided one-sixth part or portion of lots 7 & 8, in block 63, in the west division of the said city of Denver, since the 23d day of

May, A. D. 1867, and are now the owners of and entitled to the possession of the undivided one-sixth part or portion of the same.

And your orators further show unto your honor that the said complainants Whitsitt and Steck, since the 23d day of May, A. D.
15 1867, were each the owners of and entitled to the possession of the undivided one-sixth part or portion of lots 11 & 12, in block 78, and lots 13 & 14, in block 129, aforesaid, up to the 16th day of August, A. D. 1867, and since the said 16th day of August, A. D. 1867, the said Whitsitt and Steck, each, have been and are now the owners of and entitled to the possession of the undivided one-fourth part or portion of said lots 11 & 12, in block 78, and lots 13 & 14, in block 129, situate in the east division of the city of Denver.

And your orators further show unto your honor that the said defendant Dudley, by his deed of conveyance executed on the 21st day of January, A. D. 1867, conveyed the said lots numbered 5 & 6, in block 137, situate in the east division of the city of Denver aforesaid, for a valuable consideration, to one John Alexander, which deed of conveyance was filed for record in the office of the recorder of deeds for Arapahoe County, in said Territory of Colorado, on the 4th day of November, A. D. 1867, & the said John Alexander, by his deed of conveyance dated the 27th day of March, A. D. 1868, conveyed to the complainants Erastus F. Hallack and Charles Hallack the said lots 5 & 6, in block 137 aforesaid, which deed of conveyance was duly filed for record in the office of the recorder of the county of Arapahoe aforesaid, on the 30th day of March, A. D. 1868, copies of which deed from the said Dudley to the said Alexander, & from the said Alexander to your orators E. F. Halleck & Charles Hallack are hereto attached, and are marked,
16 respectively, "Exhibits L & M."

And your orators further show unto your honor that your orators Erastus F. Halleck and Charles Hallack have been ever since the 27th day of March, A. D. 1868, the owners of and entitled to the possession of the said lots 5 & 6, in block 137, aforesaid, and are now owners of and entitled to the possession of the same.

And your orators further show unto your honor that the said defendants A. E. & C. E. Tilton had notice of the filing for record and recording of the conveyance from the said Alexander to your orators E. F. and Charles Halleck, and also notice of the filing for record and the recording of the conveyance from the said defendant Dudley to the said Alexander.

And your orators further show unto your honor that the complainant John Roche is now the owner of lot 11, in block 41, situate in the west division of said city of Denver, and has been the owner of and in possession of said lot since the 6th day of January, A. D. 1869, at which last-mentioned time the complainants Cofield, Witter, Whitsitt and Steck conveyed the same to your orator Roche, by their deed of conveyance for a valuable consideration; a copy of which deed is hereto attached, marked "Exhibit N," and which your orators pray may be made part of this their bill of complaint.

And your orators further show unto your honor that on the 12th day of September, A. D. 1868, Messrs. Charles & Elbert, then acting
17 as attorneys for the said A. E. & C. E. Tilton, plaintiffs in said suit against the said defendants Dudley and Ames, filed an amended affidavit in attachment in said cause, claiming that the said Dudley and Ames were indebted to the said A. E. & C. E. Tilton in the sum of two thousand six hundred and twenty dollars and eighty cents, on an account & promissory note & for goods, wares, and merchandize sold and

delivered, and for money loaned, laid out, and expended for said Dudley & Ames; that said note was given for a part of the purchase-price of said goods, wares, and merchandize, and is dated on the 17th day of September, A. D. 1864, payable to the said A. E. & C. E. Tilton four months after date, & for the sum of two thousand five hundred and ninety-two $\frac{80}{100}$ dollars, with interest at the rate of two per centum per month from date until paid; a copy of which said amended affidavit is hereto attached, marked "Exhibit F," and your orators pray may be made part of this their bill of complaint.

And your orators, further complaining, show unto your honor that on the 12th day of September, A. D. 1868, the said Charles & Elbert, acting as attorneys for the said plaintiffs A. E. & C. E. Tilton in said suit against the said Dudley & Ames, filed an amended declaration in said cause, claiming damages against the said Dudley & Ames upon said promissory note, and upon the other counts in said declaration mentioned, in the sum of seven thousand dollars; a copy of which
18 amended declaration is hereto attached, marked "Exhibit G," and which your orators pray may be made part of this their bill of complaint.

And your orators further show unto your honor that the said Judson H. Dudley, by his power of attorney, acknowledged in the county & State of New York on the 9th day of April, A. D. 1869, authorized one L. B. France, an attorney at law, to appear for him in said cause and to confess judgment in the said suit in favor of the said A. E. & C. E. Tilton for the amount of the said promissory note and interest thereon, according to the tenor and effect of the said promissory note, which said power of attorney was filed in said cause by the said France on the 5th day of May, A. D. 1869; a copy of which said power of attorney is hereto attached, marked "Exhibit H," and your orators pray may be made part of this their bill of complaint.

And your orators further show unto your honor that the said France, in pursuance of the said power of attorney, appeared for said Dudley at the May term of said district court, to wit, on the 5th day of May, A. D. 1869, and filed his plea confessing judgment in said suit in favor of the said plaintiffs A. E. & C. E. Tilton, and against the said defendant Judson H. Dudley, for the amount of said promissory note and interest accrued thereon, at the rate of ten per centum per month, from the date of said promissory note, until the said 5th day of May, A. D. 1869, together with costs of suit; a copy of which plea is hereto attached, marked "Exhibit I," and your orators pray may
19 be made part of this their bill of complaint.

Whereupon the said district court, at the October term thereof, in the year 1869, to wit, on the first day of November, A. D. 1869, on the motion of the said Charles & Elbert, acting as attornies for the said A. E. & C. E. Tilton in said suit, rendered a judgment against the said Judson H. Dudley, and in favor of the said A. E. & C. E. Tilton, for the sum of five thousand six hundred & forty-two $\frac{80}{100}$ dollars, upon the plea of the said France, filed as aforesaid in said suit, and also for the sum of twenty-nine $\frac{50}{100}$ dollars, their costs of suit. And the said court thereupon ordered that execution issue therefor, and that a special execution and order of sale of the lots and lands of the said defendant Dudley, levied upon by virtue of the writ of attachment issued therein, should issue to satisfy the said judgment and costs of suit; a copy of which judgment is hereto attached, marked "Exhibit K," and which your orators pray may be made part of this bill of complaint.

And your orators Cofield, Witter, Whitsitt, Steck, E. F. Halleck, and

Charles Halleck further represent unto your honor that they bought the said several lots or parcels of land mentioned and described in the said deeds of conveyances, marked "Exhibits L & M, D," to this complaint, in good faith and without any knowledge of any claim or indebtedness in said suit on the part of the said Dudley and Ames to the said A. E. & C. E. Tilton other than appeared in the record and papers in said suit then pending.

20 And your orators further show to your honor that the said Alfred E. Tilton and Charles E. Tilton, defendants herein, have sued out of the district court wherein said judgment was recovered an execution and an order of sale for the sale of the several lots or parcels of land levied upon by virtue of the writ of attachment aforesaid, amongst which are the lots and lands conveyed to your orators, and now owned by them, and also the said John G. Jager, to whom your orators Cofield, Witter, & Whitsitt conveyed the two lots as hereinbefore stated.

And your orators further represent that the said execution and order of sale was delivered to and is now in the hands of the defendant D. J. Cook, sheriff of the county of Arapahoe, to be executed, and the said Cook, in pursuance of the authority in said execution and order of sale contained, has advertised the said lots or parcels of land to be sold on the 10th day of December, A. D. 1869, to satisfy the judgment recovered against the said defendant Judson H. Dudley by the said A. E. & C. E. Tilton, and the said David J. Cook purposes and designs to sell said lots or parcels of land, upon the execution now in his hands, on the 10th day of December, A. D. 1869, unless withdrawn by the process of this court.

And your orators further represent that the said A. E. & C. E. Tilton pretend that they had a right to amend by filing a new affidavit and amended declaration in said suit changing the nature of the in-

21 debtedness due them from the defendants Dudley & Ames, and enlarging the same, and also pretend that they had a right to enlarge the ad damnum in the amended declaration from the sum of three thousand dollars to the sum of seven thousand dollars, and that the said amendment did not change the cause of action; and they further pretend that said amendments worked no wrong or injury to your orators; whereas your orators charge the fact to be that, as to your orators, whom the said A. E. & C. E. Tilton knew had purchased the lots hereinbefore set forth, and which had been levied upon by virtue of the writ of attachment aforesaid, the filing of the amended affidavit and amended declaration upon the promissory note aforesaid was not only a change of the nature of the indebtedness due from the said Dudley & Ames to them, but was a change of the cause of action in said suit and an enlargement of the demand against the said Dudley & Ames, which enlarged demand they, the said A. E. & C. E. Tilton, claimed should be paid and satisfied from the sale of the lots owned by your orators; & the said John G. Jager and your orators further charge that the said A. E. & C. E. Tilton well knew that the enlargement of the demand or indebtedness aforesaid, and the collection of the same from the sale of the said lots owned by your orators and the said Jager, would cheat and defraud your orators, who were notified of the legal demand of the said A. E. & C. E. Tilton, in the said suit, at the time of the several

22 conveyances to them as hereinbefore stated, all which acts and doings of the said A. E. & C. E. Tilton, defendants herein, are in fraud of the rights of your orators, contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators.

In consideration whereof, and forasmuch as your orators are remediless by the strict rule of the common law, and are only relievable in a court of equity, where such matters are properly cognizable and relievable, and to the end that the said Alfred E. Tilton, Charles E. Tilton, Judson H. Dudley, David J. Cook, and John Alexander may respectively full, true, and perfect answers make, (but not upon oath, their oaths being expressly waived,) according to the best of their respective knowledge, information, and belief, to all and singular the matters and things herein stated, and that, as fully and particularly in every respect as if particularly interrogated thereto.

Wherefore your orators pray that so much of the said judgment rendered by the said district court in favor of the said Alfred E. Tilton and Charles E. Tilton against the said Judson H. Dudley as provides for the issuing of a special execution and order of sale of the following designated lots or parcels of land, to wit: Lots 5 & 6, in block 94; lots 11, 12, 29, & 30, in block 78; lots 15 & 16, in block 62; lots 13 & 14, in block 129; lots 25 & 26, in block 209; lots 11 & 12, in block 194; lots 21 & 22, in block 175; lots 27 & 28, in block 159; lots 7 & 8, in block 6; lot 31, in block 127; and lots 5 & 6, in block 137, situate in the east division of the city of Denver, in the county of Arapahoe, and Territory of Colorado, and
23 lots 7 & 8, in block 63, and lot 4, in block 41, situate in the west division of the said city of Denver, may be decreed to be vacated and wholly set aside, and that each and every of said lots or parcels of land may be decreed to be released and discharged and forever free and clear from the lien of the said judgment recovered against the said Judson H. Dudley by the said Alfred E. Tilton and Charles E. Tilton, in the district court of the Territory of Colorado for the first judicial district, within and for the county of Arapahoe. And your orators further pray that it may be further decreed that an injunction shall issue under the seal of said court to restrain the said defendants Alfred E. Tilton and Charles E. Tilton, their counselors, solicitors, attorneys, officers, or agents, forever, from selling said lots or any of them, or from doing any act whatsoever to enforce the collection of said judgment by the sale of the said lots or parcels of land; and that your orators shall have such other or further relief as the nature of the case may require, and that shall be agreeable to equity and good conscience. And your orators further pray that a temporary injunction may issue out of and under the seal of this honorable court, directed to the said Alfred E. Tilton and Charles E. Tilton and David J. Cook, their counsellors, attornies, solicitors, and agents, commanding them and each of them absolutely to desist and refrain from proceeding further upon the execution, issued out of the district court aforesaid, for the
24 collection of the judgment recovered by the said Alfred E. Tilton and Charles E. Tilton against the said Judson H. Dudley, by the sale of the lots or parcels of land levied upon by virtue of the writ of attachment aforesaid, and conveyed to and by your said orators and the said John G. Jager, or from doing any act or thing whatsoever to collect the amount of said judgment by the sale of the said lots or parcels of land.

May it please your honor to grant unto your orators a writ of summons in chancery, directed to the coroner of Arapahoe County, in Colorado Territory, the said defendant Cook being sheriff of said county, commanding him to summon the defendants, Alfred E. Tilton, Charles E. Tilton, David J. Cook, and Judson H. Dudley, and John Alexander, to be and appear before this honorable court at the January term, A. D.

1870, and then and there to answer the matters & things in this bill of complaint contained, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

JOSEPH B. COFIELD.
DANIEL WITTER.
RICHARD E. WHITSITT.
AMOS STECK.
ERASTUS F. HALLECK.
CHARLES HALLECK.
JOHN ROCHE.

J. BRIGHT SMITH, E. L. SMITH,
ALFRED SAYRE, AMOS STECK,
Solicitors.

25 THE TERRITORY OF COLORADO,
Arapahoe County, ss:

Joseph B. Cofield, Erastus F. Halleck, Charles Halleck, Daniel Witter, Richard E. Whitsitt, John Roche, and Amos Steck, complainants in the foregoing bill of complaint, state on oath that they have heard the above bill by them subscribed read, and understand the contents thereof, and that each for himself says that the same is true, so far as therein stated on their own knowledge, and as to the matters and things therein stated on information and belief they believe it to be true.

JOSEPH B. COFIELD.
DANIEL WITTER.
RICHARD E. WHITSITT.
AMOS STECK.
ERASTUS F. HALLECK.
CHARLES HALLECK.
JOHN ROCHE.

Sworn to and subscribed before me this 7th day of December, A. D. 1869.

OLIVER A. WHITTEMORE, *Clerk.*

A.

TERRITORY OF COLORADO,
Arapahoe County, ss:

Alexander Davidson, being first duly sworn, deposes and says that he is a regularly authorized agent of Alfred E. Tilton and Charles E. Tilton, partners, doing business under the firm name and style of A. E. & C. E. Tilton, in the city of Denver, Colorado Territory, and that Judson H. Dudley and Thomas P. Ames, heretofore doing busi-
26 ness in said city of Denver, under the firm name and style of Dudley & Ames, are indebted to the said Alfred E. Tilton and Charles E. Tilton, partners as aforesaid, in the full and just sum of two thousand six hundred and twenty-seven dollars and eighty cents, for goods, wares, and merchandise heretofore sold and delivered to the said Dudley & Ames, and that said Judson H. Dudley is about to depart from this Territory, to the injury of the said Alfred E. Tilton and Charles E. Tilton, partners as aforesaid, his creditors. And affiant further states that the said Thomas P. Ames has departed from the Territory.

ALEXANDER DAVIDSON.

Subscribed and sworn to before me this 28th day of August, A. D. 1865.

ATTILA L. HARDING, *Clerk.*
By HENRY A. CLOUGH, *Deputy.*

(Endorsed:) Exhibit A. G. D., No. 126. Alfred E. and Charles E. Tilton, partners, as A. E. & C. E. Tilton, vs. Judson H. Dudley and Thomas P. Ames, partners, as Dudley & Ames. Affidavit in attachment. Filed in the district court, this 28th day of August, A. D. 1865. Attila L. Harding, clerk, by Henry A. Clough, deputy. J. M. Cavanaugh, atty.

27 TERRITORY OF COLORADO,
Arapahoe County, ss:

The people of the Territory of Colorado to the sheriff of said county, greeting:

Whereas Alexander Davidson, agent for Alfred E. Tilton and Charles E. Tilton, partners doing business under the name and style of A. E. & C. E. Tilton, of the county of Arapahoe, and Territory of Colorado, hath, on this 28th day of August, A. D. 1865, complained on oath to Attila L. Harding, clerk of the district court for the first judicial district in said Arapahoe County, that Judson H. Dudley and Thomas P. Ames, partners, heretofore doing business under the firm name and style of Dudley & Ames, of the county and Territory aforesaid, are justly indebted to the said Alfred E. Tilton and Charles E. Tilton, copartners as aforesaid, to the amount of two thousand six hundred and twenty dollars and eighty cents, and oath having also been made that the said Judson H. Dudley is about to depart from this Territory, with the intention of having his effects removed from this Territory, and that the said Thomas P. Ames resides out of this Territory, to the injury of the said Alfred E. Tilton and Charles E. Tilton, copartners as aforesaid. And the said Alfred E. Tilton and Charles E. Tilton, having given bond and security according to the act in such case made and provided, we therefore command you that you attach so much of the estate, real or personal,
28 of the said Judson H. Dudley and Thomas P. Ames to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint, and such estate so attached in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon according to law, at a district court to be holden at Denver City, within and for the said county, on the first Tuesday of December, A. D. 1865; and that you also summon Warren Hussey and Frank Palmer, Hyatt Hussey, Frank Page, as garnishees of said defendants, to be and appear at the said court on the said first Tuesday of December next, then and there to answer to what may be objected against them, when and where you shall make known to said court how you have executed this writ; and have you then and there this writ.

Witness Attila L. Harding, clerk of said court, and the seal thereof, at Denver City, in said county, this day of , A. D. 1865.

{ARAPAHOE COUNTY DISTRICT COURT SEAL. COLORADO.}

ATTILA L. HARDING, *Clerk.*
HENRY A. CLOUGH, *Deputy.*

[U. S. internal-rev. stamp of 50 cents, cancelled as follows: A. L. H., Aug. 25th, 1865.]

29 TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, J. L. Bailey, deputy-sheriff of the county of Arapahoe, and Territory of Colorado, have this day, by virtue of the aforesaid writ, to which this is attached, levied the above attachment on the following-described real estate, to wit: Lots 5 & 6, in block 94; 11, 12, b. 78; l. 29, 30, b. 78; lots 15, 16, b. 62; l. 13, 14, b. 129; l. 25, 26, b. 209; l. 11, 12, b. 194; l. 21, 22, b. 175; l. 27, 28, in b, 159; l. 5, 6, in b. 137; l. 17, 18, in b. 11; l. 7, 8, in b. 6; l. 31, in b. 127, in east division of Denver City. Also lots 7, in b. 63; lot 4, in b. 41; l. 8, in b. 65; l. 2, in b. 40; l. 8, in b. 63, in the west division of Denver City: all in the county of Arapahoe and Territory of Colorado.

SHERIFF'S OFFICE,
Denver City, C. T., Aug. 28, 1865.

The above-described property is levied upon as the property of Judson H. Dudley, at the suit of Alfred E. Tilton and Charles E. Tilton vs. Judson H. Dudley and Thomas P. Ames, Aug. 28, 1865.

OMER O. KENT, *Sheriff*,
Per J. L. BAILEY, *Deputy.*

(Indorsed:) Exhibit B. Attachment writ. G docket, No. 726, page . District court. A. E. and C. E. Tilton vs. Dudley and Ames.

TERRITORY OF COLORADO, *County:*

I have duly served the within by reading the same to the within-named Judson H. Dudley, Warren Hussey, Hyatt Hussey, and Frank Page, this 28th day of August, 1865. Frank Palmer not found in my county. As I am therein commanded.

O. O. KENT, *Sheriff*,
Per J. L. BAILEY.

Fees: Service fees, 8.00; mileage, ; return, . Filed in district court this 27th day of June, 1868. Henry A. Clough, clerk. Paid by Tilton. , attorney.

30 1st judicial district, in district court, to the December term, A. D. 1865, thereof, in and for the county of Arapahoe aforesaid.

TERRITORY OF COLORADO,
Arapahoe County, ss:

ALFRED E. TILTON AND CHARLES E. TILTON, a firm doing business under the name and style of A. E. & C. E. Tilton,
vs.
JUDSON H. DUDLEY & THOMAS P. AMES, a firm heretofore doing business under the name and style of Dudley & Ames.
} Assumpsit. Damages, $3,000.00.

Alfred E. Tilton and Charles E. Tilton, a firm doing business under the name and style of A. E. and C. E. Tilton, plaintiffs in this suit, by Cavanaugh & Butler, their attornies, complain of Judson H. Dudley & Thomas P. Ames, a firm heretofore doing business under the name and style of Dudley and Ames. The defendants summoned, &c., in a plea of trespass on the case on promises, for that whereas the said defend-

ants on, heretofore, to wit, the first day of August, A. D. 1865, at, to wit, the county of Arapahoe aforesaid, was indebted to the said plaintiffs in the sum of three thousand dollars, for divers goods, wares, and merchandise before that time sold and delivered by the plaintiffs to the defendant at his request, and for so much money before that time had and received by the defendant to the plaintiff's use, a like sum of three
31 thousand dollars, and for so much money before that time lent and accom'odated by the plaintiff to the defendant, at his request, a like sum of three thousand dollars; and for so much money before that time laid out and expended by the plaintiff for the use of the defendant, a like sum of three thousand dollars; and for so much money found to be due from defendant to plaintiff upon an account then and there stated between them, a like sum of three thousand dollars; and, being so indebted, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised the plaintiffs to pay them the said sum of money when requested.

Yet, though often requested, the said defendant hath not paid said sum of money, but wholly neglects and refuses so to do, to the damage of the plaintiffs three thousand dollars, wherefore they bring suit, &c.

CAVANAUGH & BUTLER,
Att'ys for Pl'ff.

Copy of account sued on.

To goods, wares, and merchandise, sold and delivered.....	$3,000 00
For monies had and received.....	$3,000 00
For money lent and accommodated to the defendants at their request..	$3,000 00
For money laid out and expended.....	$3,000 00
For money due on account stated.....	$3,000 00

32 (Endorsed:) Exhibit C. G. D. No. 726. A. E. and C. E. Tilton vs. Judson H. Dudley & Thomas P. Ames. Attachment. Declaration. Filed Nov'r 25th, 1865. Henry A. Clough, clerk. Cavanaugh & Butler, pl'ff's att'ys.

This deed, made this twenty-third day of May in the year of our Lord one thousand eight hundred & sixty-seven, between David H. Moffat, jr., of the county of Arapahoe, and Territory of Colorado, of the first part, and Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five thousand one hundred dollars, (5,100.00,) to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, convey, and confirm unto the said parties of the second part, their heirs and assigns, forever, all the following described lots in Denver, situate, lying, and being in the county of Arapahoe, and Territory of Colorado, to wit: Lots No. seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, (17, 18, 19, 20, 22, 23, 24, 25, & 26,) in block No. two hundred and seventeen, (217;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-
33 five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty,

thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, & 32,) in block No. two hundred and twenty-four, (224;) lot No. twenty-four, (24,) in block No. two hundred and twenty-five, (225;) lot No. twenty-four, (24,) in block No. two hundred and twenty-six; lot No. eight, (8,) in block No. two hundred and fifty, (250;) lot No. eleven, (11,) in block two hundred and sixty, (260;) lots seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, & thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and sixty-one, (261;) lot No. twenty-two, (22,) in block No. two hundred and sixty-two, (262;) lot No. thirty-one and thirty-two (31, & 32,) in block No. two hundred and sixty-three, (263;) lots No. nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, (19, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, & 32,) in block No. (284) two hundred and eighty-four; lot No. nineteen, (19,) in block No. two hundred and eighty-six, (286;) lot No. twenty-one, (21,) in block No. two hundred and ninety-eight, (298;) lots No. seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, & 32,) in block No. three hundred, (300;) lots No. one, two, three, four, five, six, and seven, (1, 2, 3, 4, 5, 6, & 7,) in block No. three hundred and eighteen; lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three, (17, 18, 19, 20, 21, 22, & 23,) in block No. three
34 hundred and twenty-one, (321;) lots No. five & six, (5 & 6,) in block No. three hundred and thirty-five, (335;) lots No. five & six, (5 & 6,) in block No. three hundred and thirty-six; lots No. thirteen and fourteen, (13 & 14,) in block No. one hundred and seventy-eight, (178;) lots No. seven & eight, (7 & 8,) in block No. two hundred and fifty-one, (251;) lots No. twenty-three & twenty-four, (23 & 24,) in block No. one hundred & forty-four; lots No. nine & ten, (9 & 10,) in block No. two hundred and sixty; lots No. three & four, (3 & 4,) in block No. three hundred & thirty-five, (335;) lots No. seventeen and eighteen, (17 & 18,) in block No. two hundred and sixty-two, (262;) lots No. seventeen & eighteen, (17 & 18,) in block No. one hundred and fifty-six, (156;) lots No. twenty-seven & twenty-eight, (27 & 28,) in block No. one hundred and fifty-nine, (159;) lots No. seven & eight, (7 & 8,) in block No. six, (6;) lot No. thirty-one, (31,) in block No. one hundred & twenty-seven, (127;) lots No. twenty-five & twenty-six, (25 & 26,) in block No. two hundred & nine, (209;) lots five & six, (5 & 6,) in block No. ninety-four, (94;) lots No. eleven & twelve, & twenty-nine & thirty, (11, 12, 29, and 30,) in block No. seventy-eight, (78;) lots No. thirty-one & thirty-two, (31 & 32,) in block No. one hundred and eight, (108;) lots No. twenty-seven & twenty-eight, (27 & 28,) in block No. one hundred and thirty-seven, (137;) lots No. fifteen & sixteen, (15 & 16,) in block No. one hundred & seventy-two, (172;) lots No. one & two, (1 & 2,) in block one hundred and sixty-five, (165;) fractional ots fifteen & sixteen, (15 & 16,) in block sixty-two, (62;) lots No. thirteen & fourteen, (13 & 14,) in block one hundred and twenty-nine, (129;) lots No. eleven & twelve, in block No. one hundred & ninety-four, (194;) and lots No. twenty-one & twenty-two, (21 & 22,) in block No. one
35 hundred & seventy-five, (175.) Also fractional lots Nos. twenty-seven, twenty-eight, & twenty-nine, in block No. two hundred & seventeen, (217;) six, nineteen, & twenty, (6, 19, & 20,) in block No. two hundred and ninety-seven, (297;) eight, nine, ten, eleven, and twelve, (8, 9, 10, 11, & 12,) in block No. three hundred & eighteen, (318;) twenty-

four, twenty-five, twenty-six, twenty-seven, & twenty-eight, (24, 25, 26, 27, & 28,) in block No. three hundred and twenty-one, (321;) twenty-nine & thirty, in block No. two hundred and sixty, (260;) nine & ten, in block No. two hundred & eighty-three, (283;) twenty-one & twenty-two, (21 & 22,) in block two hundred and twenty-six, (226;) seven & eight, in block one hundred & fifty-eight, (158;) eighteen, (18,) in block No. two hundred & twenty-six, (226,) and eighteen, (18,) in block No. one hundred and ninety-one, (191;) all in Denver City, east division, according to the survey of F. J. Ebert, city surveyor. Also lots No'. seven & eight, (7 & 8,) in block sixty-three, (63;) lot No. (4) four, in block No. forty-one, (41;) & lots No'. one, two, three, four, five, & six, (1, 2, 3, 4, 5, & 6,) in block No. seventy-one, (71;) in Denver City, west division, according to the said survey of F. J. Ebert, city surveyor: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim, whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said parties of the second part,
36 their heirs and assigns, forever. And the said party of the first part, the aforesaid David H. Moffat, jr., unto the parties of the second part, their heirs and assigns, against the claim or claims of all and every person whatsoever claiming or to claim the same by, through, or under the party of the first part, doth and will warrant and forever defend by these presents.

In witness whereof the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

DAVID MOFFAT, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
ALFRED SAYRE.
GEO. W. WILLS.

[U S. rev. stamp, 5$.] [U. S. rev. stamp, 50c.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alfred Sayre, a notary public, in and for said county & Territory aforesaid, do hereby certify that David H. Moffat, jr., personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, & delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23d day of May, A. D. 1867.

[NOTARIAL SEAL.] ALFRED SAYRE, *Notary Public.*

37 (Endorsed:) Exhibit D. David H. Moffat, jr., to Daniel Witter et al. Filed for record, May 23d, A. D. 1867, at two o'clock, p. m. Recorded in book 15, page 110. Cha's G. Chever, clk. & recorder, Arapahoe Co., Colo. Ty.

38 This deed, made this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, between Richard E. Whitsitt, of the county of Arapahoe, and Territory of Colorado, of the first part, and Amos Steck, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of eight hundred and fifty dollars, $850.00, to the said party of the first part in hand

paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed and quitclaimed, and by these presents doth remise, sell, convey, and quitclaim unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand, which the said party of the first part has in and to the following described lots or parcels of land, situate, lying, and being in the county of Arapahoe, and Territory of Colorado, to wit:

The undivided one-sixth ($\frac{1}{6}$) of the following: Lots number seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, (17, 18, 19, 20, 22, 23, 24, 25, & 26,) in block No. two hundred and seventeen, (217;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, & 32,) in block No. two hundred and twenty-four, (224;) lot No. twenty-four, (24,) in block No. two hundred and twenty-five, (225;) lot No. twenty-four, (24,) in block No. two hundred and twenty six, (226;) lot No. eight, (8,) in block No. two hundred and fifty, (250;) lot No. eleven, (11,) in block No. two hundred and sixty, (260;) lots No. seventeen, eighteen, nineteeen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, & thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and sixty-one, (261;) lot No. twenty-two, (22,) in block No. two hundred and sixty-two, (262;) lots No. thirty-one and thirty-two, (31 & 32,) in block No. two hundred and sixty-three (263;) lots No. nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty nine, thirty, thirty-one, and thirty-two, in block No. two hundred and eighty-four, (284;) lot nineteen, (19,) in block No. two hundred and eighty-six, (286;) lot No. twenty-one, (21,) in block No. two hundred and ninety-eight, (298;) lots No. seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, & 32,) in block No. three hundred, (300;) lots No. one, two, three, four, five, six, and seven, (1, 2, 3, 4, 4, 6, & 7,) in block No. three hundred and eighteen, (318;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three, (17, 18, 19, 20, 21, 22, & 23,) in block No. three hundred and twenty-one, (321;) lots five and six, (5 & 6,) in block No. three hundred and thirty-five, (335;) lots No. five and six, (5 & 6,) block three hundred and thirty-six, (336;) lots No. thirteen and fourteen, (13 & 14,) in block No. one hundred and seventy-eight, (178;) lots No. (7 & 8,) seven and eight, in block No. two hundred and fifty-one, (251;) lots No. twenty-three and twenty-four, (23 & 24,) in block No. one hundred and forty-four, (144;) lots No. nine and ten, (9 & 10,) in block No. two hundred and sixty, (260;) lots No. three and four, (3 & 4,) in block No. three hundred and thirty-five, (335;) lots No. seventeen and eighteen, (17 & 18,) in block No. two hundred and sixty-two, (262;) lots No. seventeen and eighteen, (17 & 18,) in block No. one hundred and fifty-six, (156;) lots No. twenty-seven and twenty-eight, (27 & 28,) in block No. one hundred and fifty-nine, (159;) lots No. (7 & 8,) seven and eight, in block No. six, (6;) lot No. thirty-one, (31,) in block No. one hundred and twenty-seven, (127;) lots No. twenty-five and twenty-six, (25 & 26,) in block No. two hundred and nine, (209;) lots No. five and six, (5 & 6,) in block No. ninety-four, (94;) lots twenty-nine and thirty, (29 & 30,) in block No. seventy-eight, (78;) lots No. twenty-

seven and twenty-eight, (27 & 28,) in block No. one hundred and thirty-seven, (137;) lots No. fifteen and sixteen, (15 & 16,) in block No. one hundred and seventy-two, (172;) lots (1 and 2,) one & two in block No. one hundred and sixty-five, (165;) lots No. eleven and twelve, (11 & 12,) in block No. one hundred and ninety-four, (194;) lots twenty-one and twenty-two, (21 & 22,) in block No. one hundred and seventy-five, (175;) fractional lots No. twenty-seven, twenty-eight and twenty-nine
41 (27, 28, 29,) in block No. two hundred and seventeen, (217;) lots No. six, nineteen, and twenty, (6, 19, & 20,) in block No. two hundred and ninety-seven, (297;) lots No. eight, nine, ten, eleven, and twelve, (8, 9, 10, 11, & 12,) in block No. three hundred and eighteen, (318;) lots No. twenty-four, twenty-five, twenty six, twenty-seven, and twenty-eight, (24, 25, 26, 27, & 28,) in block No. three hundred and twenty-one; lots No. twenty-nine and thirty, (29 & 30,) in block No. two hundred and sixty, (260;) lots No. (9 & 10,) nine & ten, in block No. two hundred and eighty-three, (283;) lots No. twenty-one and twenty-two, (21 & 22,) in block No. two hundred and twenty-six, (226;) lots No. seven & eight, (7 & 8,) in block No. one hundred and fifty-eight, (158;) lot No. eighteen in block No. two hundred and twenty-six, (226;) lot No. eighteen, (18,) in block No. one hundred and ninety-one, (191;) also the undivided one fourth ($\frac{1}{4}$) of lots No. eleven and twelve, (11 & 12,) in block No. seventy-eight, (78;) and lots No. thirteen and fourteen, (13 & 14,) in block No. one hundred and twenty-nine, (129;) all in the east division of the city of Denver as per survey of F. J. Ebert, formerly Boyd's survey. Also the undivided one-sixth ($\frac{1}{6}$th) part of lots No. seven & eight, (7 & 8,) in block No. sixty-three, (63;) lot No. four (4,) in block No. forty-one, (41;) lots No. one, two, three, four, five and six, (1, 2, 3, 4, 5, & 6,) in block seventy-one, (71;) situate in the west division of the city of Denver as per survey of F. J. Ebert:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim
42 whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof, of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

RICHARD E. WHITSITT. [SEAL.]

Signed, sealed & delivered in presence of—(The undivided one-sixth (6th) part of, on last page above interlined before signing.—)

J. BRIGHT SMITH.

[$. U. S. internal rev. stamp attached and cancelled as follows: R. E. Whitsitt, June 24th 1868.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Wm. T. McLaughlin a notary public in and for said county, in the Territory aforesaid, do hereby certify that Richard E. Whitsitt personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

WILLIAM T. MCLAUGHLIN NOTARY PUBLIC, ARAPAHOE CO. COLORADO.

Given under my hand and notarial seal this twenty-fourth day of July, A. D. 1868.

WM. T. McLAUGHLIN,
Notary Public.

43 (Endorsed: Exhibit E, R. E. Whitsitt to Amos Steck.

In the district court of the first judicial district of Colorado Territory, within and for the county aforesaid, to the October term thereof, A. D. 1868.

TERRITORY OF COLORADO,
County of Arapahoe:

ALFRED E. TILTON AND CHARLES E. TILTON, partners doing business under the firm-name and style of A. E. & C. E. Tilton,
vs.
JUDSON H. DUDLEY AND THOMAS P. AMES, partners heretofore doing business under the name and style of Dudley & Ames.
} Attachment.

ALBERT K. TILTON, of lawful age, being first duly sworn, on oath deposes and says, that he is the duly authorized agent of the said A. E. & C. E. Tilton, the plaintiffs in the above-entitled suit.

44 Affiant further deposes and says that, on the 28th day of August, A. D. 1865, when the above-entitled suit was commenced, the said defendants, Dudley and Ames, partners as aforesaid, were justly indebted to the said A. E. & C. E. Tilton in the sum of twenty-six hundred and twenty dollars and eighty cents on an account & promissory note & for goods, wares, and merchandise sold and delivered, & for money loaned, laid out, & expended for said Dudley & Ames; that said note was given for a part of the purchase-price of said goods, wares, & merchandise and is dated on the 17th day of September, A. D. 1864, payable to the said A. E. & C. E. Tilton, four months after date, & for the sum of two thousand five hundred and ninety-two $\frac{80}{100}$ dollars, with interest at the rate of two per cent. per month from date until paid; that the said account, note, & interest thereon was, at the time this suit was commenced, due and unpaid, and that the same still remains due and unpaid.

Affiant further deposes and says that, at the time said suit was commenced, the said Judson H. Dudley was about to depart from the Territory of Colorado with the intention of having his effects removed from said Territory, and that the said Thomas P. Ames had departed from said Territory when said suit was so commenced; and further saith not.

ALBERT K. TILTON.

45 Subscribed and sworn to before me this 12th day of September, A. D. 1868.

HENRY A. CLOUGH, *Clerk.*

(Endorsed:) Exhibit F. A. E. & C. E. Tilton vs. J. H. Dudley et al. Amended affidavit. Filed Sept. 12, 1868. Henry A. Clough, clerk. Charles & Elbert, for plffs.

46 *Declaration.*

[Endorsed: Printed and so'd at the Tribune office.]

TERRITORY OF COLORADO,
County of Arapahoo, ss:

In the district court of the first judicial district of Colorado Territory, within and for the county of Arapahoe, of the October term, A. D. 1868.

Alfred E. Tilton and Charles E. Tilton, partners, doing business under the firm name and style of A. E. & C. E. Tilton, plaintiffs in this suit, by Charles & Elbert, their attorneys, complain of Judson H. Dudley and Thomas P. Ames, partners, heretofore doing business under the firm name and style of Dudley & Ames, defendants, who were attached, &c., in a plea of trespass on the case on promises.

1ST COUNT.—For that whereas the said defendants heretofore, to wit, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and sixty-four, at Denver, to wit, at the county aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to the said plaintiffs, in and by which said note said defendants, by the name, style, and description of Dudley and Ames, promised to pay to the order of the said A. E. & C. E. Tilton, four months after the date thereof, the sum of twenty-five hundred and ninety-two dollars and eighty cents, with interest at the rate of two per cent. per month
47 from date until paid, for value received. By means whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay said plaintiffs said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiffs according to the tenor and effect, true intent, and meaning of the said note, to wit, at the place aforesaid.

2ND COUNT.—And whereas also the said defendants heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and sixty-five, at Denver, to wit, at the county aforesaid, were indebted to the said plaintiffs in the sum of seven thousand dollars, lawful money of the United States, for the work and labor, care and diligence of the said plaintiffs, by the said plaintiffs before that time done, performed, and bestowed, in and about the business of the said defendants, and for the said defendants, and at their special instance and request; and also in the further sum of seven thousand dollars of like lawful money for divers goods, wares, and merchandise by the said plaintiffs before that time sold and delivered to the said defendants, and at their special instance and request; and also in the further sum of seven thousand dollars of like lawful money, for *for* money by said plaintiffs before that time lent and advanced to, and paid, laid out,
48 and expended for, the said defendants, and at their like special instance and request; and also in the further sum of seven thousand dollars of like lawful money, for other money by the said defendants before that time had and received to and for the use of the said plaintiffs; and also in the further sum of seven thousand dollars of like lawful money for so much money before that time, and then due and payable from the said defendants to the said plaintiffs for interest upon, and for the forbearance and use of divers large sums of money be

fore that time due and owing from said defendants to the said plaintiffs, and by the said plaintiffs foreborne to the said defendants for divers long spaces of time before then elapsed, and at the like special instance and request of the said defendants; and also that the said defendants accounted with the said plaintiffs of and concerning divers other sums of money from the said defendants to the said plaintiffs before that time due and owing, and then in arrear and unpaid; and upon such accounting the said defendants wer' then and there found to be in arrear and indebted to the said plaintiffs in the further sum of seven thousand dollars of like lawful money, and being so indebted, they the said defendants in consideration thereof, afterwards, to wit, on the day and year aforesaid at, to wit, the county aforesaid, undertook, and then
49 faithfully promised the said plaintiffs, to pay them the said several sums of money in this count mentioned, when they the said defendants should be thereunto afterwards requested.

BREACH.—Nevertheless the said defendants, not regarding their said several promises and undertakings, have not as yet paid the said several sums of money, or any or either of them, or any part thereof to the said plaintiffs, (although often requested so to do;) but the said defendants to pay them the same have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the said plaintiffs of seven thousand dollars; and therefore they bring their suit, &c.

CHARLES & ELBERT,
Attorneys for Plaintiff.

Copy of instrument and account sued in said declaration.

$2,592.80.] DENVER, C. T., *Sep. 17th*, 1864.

Four months after date, we promise to pay to A. E. & C. E. Tilton, or order, the sum of twenty-five hundred and ninety-two $\frac{80}{100}$ dollars, for value received, negotiable and payable without defalcation or discount, with interest at the rate of two per cent. per month from date until paid.

DUDLEY & AMES.

[Rev. stamp 1.30.]

50, 51 *Dudley & Ames to A. E. & C. E. Tilton, Dr.*

1865.		
August 1.	To work & labor, materials, &c	$7,000 00
"	" goods, wares, & merchandise	$7,000 00
"	" money lent, laid out, &c	$7,000 00
"	" " had & received	$7,000 00
"	" interest due on money & a/c	$7,000 00
"	" balance due on settlement	$7,000 00

(Endorsed:) Exhibit G. A. E. & C. E. Tilton vs. J. H. Dudley et al. Amended narr. Filed September 12th, 1868. Henry A. Clough, clerk. Charles & Elbert, for plffs.

52 Know all men by these presents that I, Judson H. Dudley, of the city and State of New York, reposing special trust and confidence in Lewis B. France, of the county of Arapahoe and Territory of Colorado, have ordained, constituted, and appointed, and by these presents do hereby ordain, constitute, and appoint, the said Lewis B. France my true and lawful attorney for me and in my name, place, and

stead, and for my own proper use, to appear for me and take full charge, control, and management of a certain suit at law now pending and undetermined in the district court of the first judicial district of Colorado, within and for the county of Arapahoe, which said suit was commenced by attachment by Alfred E. Tilton and Charles E. Tilton, partners, doing business under the firm name and style of A. E. & C. E. Tilton, as plaintiffs, and against myself and one Thomas P. Ames, copartners, under the name and style of Dudley & Ames, as defendants, on the 28th day of August, A. D. 1865, and for me and in my name and use to file a plea or pleas confessing judgment in said suit against me upon a certain promissory note dated at Denver, September the 17th, A. D. 1864, which said note is in the words and figures following, to wit:

"$2,592.80.] DENVER, C. T., *Sep. 17th*, 1864.

"Four months after date we promise to pay to A. E. & C. E. Tilton, or order, the sum of twenty-six hundred and ninety-two $\frac{80}{100}$ dollars, for value received, negotiable and payable without defalcation or discount, with interest at the rate of two per cent. per month from date until paid.

"DUDLEY & AMES."

Said plea or pleas confessing judgment as aforesaid to be for the
53 amount of said note and the interest thereon, according to the legal tenor and effect, together with costs of said suit, and for me and in my name to discharge all other attorneys at law who have heretofore for me or in my name in said suit, and to revoke, annul, and withdraw all motions, pleas, or other papers which may have been filed in said suit by other attorneys, and which it may be necessary to revoke, annul, or withdraw for the purpose of making said judgment so to be confessed as aforesaid on said note of full and binding force & effect, and for me and in my name to waive all errors in confessing and entering up said judgment, when so confessed and entered of record; hereby revoking and recalling all other powers or authorities, written or verbal, which may have been given by me heretofore, or which may be claimed to have been given by me to other attorneys to appear and act for me in the control and management of said suit; hereby giving and granting irrevocably unto the said Lewis B. France, as my attorney aforesaid, full power and authority to act for me in the premises in as full and ample a manner as I could do myself were I personally present at the doing thereof; hereby ratifying and confirming all that my said attorney may do or cause to be done in and about the premises by virtue of these presents.

, J. H. DUDLEY. [SEAL.]

In presence of—
THOMAS H. LAW, JR.

(The erasure and interlineations between lines 42 & 45 made before signing.)—J. H. D.
J. G. METCALF.

[25-cent U. S. internal-rev. stamp attached, cancelled as follows: J. H. D., Apr 9, '69]

54 STATE OF NEW YORK,
County of New York, ss:

I, Nath'l Jarvis, jr., clerk of the court of common pleas, city and

county of New York, do hereby certify that Judson H. Dudley, personally known to me as the person whose name is subscribed to the annexed and foregoing power of attorney, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and the seal of said court attached hereto on this 9th day of April, A. D. 1869. N. J., jr.

{ NEW YORK COMMON PLEAS. } NATH'L JARVIS, JR., *Clerk N. Y. Com. Pleas.*

(Endorsed:) Exhibit H. Power of atty. from J. H. Dudley to L. B. France. Filed May 5th, 1869. Henry A. Clough, clerk.

55 TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of Colorado Territory, within and for the county of Arapahoe, of the May term, A. D. 1869.

ALFRED E. TILTON AND CHARLES E. TILTON, copartners, &c., *vs.* JUDSON H. DUDLEY AND THOMAS P. AMES, copartners, &c. } In attachment. Cognovit actionem.

And the said defendant, Judson H. Dudley, by L. B. France, his attorney, comes and defends the wrong and injury when, &c., and says that he cannot deny the action aforesaid of the said plaintiffs thereof against him, nor but that he promised & undertook in manner and form as the said plaintiffs have above thereof complained against him, nor but that the said plaintiffs have sustained damage by reason thereof, over and above their costs & charges by them laid out & expended in and about this said suit, to the amount of five thousand four hundred & seventy dollars and eighty cents, together with the costs of suit, and agrees that judgment may be entered against him, the said defendant, for that amount; and the said defendant further agrees that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and that he hereby releases all error
56 that may intervene in entering up the same, or in issuing execution thereon.

L. B. FRANCE,
Atty. for Deft. Judson H. Dudley.

(Endorsed:) Exhibit I. Alfred E. Tilton et al. vs. Judson H. Dudley et al. Plea. Filed May 5th, 1869. Henry A. Clough, clerk. L. B. France, atty. for deft. Dudley.

Nov. 1st, 1869.

(4) A. E. & C. E. TILTON
vs.
(726) JUDSON H. DUDLEY, IMPLEADED WITH
(432) Thomas P. Ames. } Attachment.

And now, on this day, comes the said plaintiffs, Messrs. Charles &

Elbert, their attorneys, and also comes the said J. Bright Smith, by Amos Steck, esq., his attorney, and comes the said Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt, by Amos Steck, esq., their attorney, and the said Amos Steck, in his own proper person; and also comes the said defendant, Judson H. Dudley, by L. B. France, esq., his attorney; and the court having heretofore, at the last term of said court, taken the motion of the said J. Bright Smith, to strike the said
57 plea of the said defendant, confessing judgment in said suit, filed on the fifth day of May, A. D. 1869, by L. B. France, esq., as the attorney of said defendants, the power of attorney of the said defendant authorizing the said France to file said plea, from the files of said suit; also the said motion and petition of the said Witter, Cofield, Whitsitt, & Steck, praying to be made parties, and for leave to contest the said plaintiffs' claim in this suit, under advisement, and *and* the court having duly considered said motion and petition, and being fully advised in the premises, it is therefore considered by the court that said motion and petition be overruled and denied; and the court having also heretofore, to wit, on the 6th day of May, A. D. 1869, and of the May term of said court, A. D. 1869, taken under advisement the motion of the said plaintiffs for judgment on the said plea of said defendant confessing judgment in this suit, and the court having considered the same, and being fully advised in the premises, it is therefore considered by the court that the said plaintiffs do have and recover of the said defendant, Judson H. Dudley, the said sum of five thousand four hundred and seventy dollars and eighty cents, (5,470.80,) together with interest on said sum from the date of filing said plea, at the rate of ten per centum per annum, to the date of entering this judgment, amounting to the further sum of two hundred and seventy-two dollars, making the full sum of five thousand six hundred and forty-two dollars and eighty cents, (5,642.80,) as their damages so as aforesaid confessed by the said
58 defendant in his said plea, and the interest thereon as aforesaid, and also their costs by them about this suit in this behalf laid out and expended, taxed at dollars, and that they have execution therefor, and that a special execution and order of sale for the sale of the property of the said defendant, Judson H. Dudley, attached on the writ of attachment issued herein, do issue.

(Endorsed:) Exhibit K. Filed November 25th, 1869. Oliver A. Whittemore, clerk.

This deed, made this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-eight, between John Alexander, of the county of Arapahoe, and Territory of Colorado, of the first part, and Erastus F. Hallack and Charles Hallack, of the county of Arapahoe, & Territory of Colorado, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of four thousand dollars to the parties of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm, unto the said parties of the second part, their heirs and assigns forever, all the following described lots or parcels of land, situate, lying, & being in the county of Arapahoe and Territory of Colorado, to wit: Lots
59 four, (4,) five, (5,) & six, (6,) in block one hundred and thirty-seven, (137,) East Denver, said county and Territory, together with all and singular the hereditaments and appurtenances thereunto be-

longing or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

And the said John Alexander, party of the first part, for his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the ensealing and delivering of these presents, he was well seized of the premises above conveyed as of a good, sure, perfect, absolute, & indefeasible estate of inheritance in law in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner & form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of whatever kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

60 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written.

JOHN ALEXANDER. [SEAL.]

Signed, sealed, and delivered in presence of—

[Rev. stamp $4, cancelled.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alfred Sayre, a notary public in and for said county, in the Territory aforesaid, do hereby certify that John Alexander, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this thirteenth day of March, A. D. 1868.

[NOTARIAL SEAL.] ALFRED SAYRE,
Notary Public.

(Endorsed:) Exhibit M.

TERRITORY OF COLORADO,
County of Arapahoe:

This deed was filed for record at 2½ o'clock p. m., March 30th, 1868, and recorded in book 18, page No. 486.

W. D. ANTHONY, *Recorder.*

61 This deed, made the twenty first day of January, in the year of our Lord one thousand eight hundred and sixty-seven, between Judson H. Dudley, of the county of Arapahoe, and Territory of Colorado, of the first part, and John Alexander, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth: That

the said party of the first part, for and in consideration of the sum of five hundred dollars ($500.00) to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, and sell, convey, & confirm, unto the said party of the second part, his heirs & assigns forever, all the following described lots or pieces of land, situate, lying, and being in the county of Arapahoe, & Territory of Colorado, to wit, being lots number five (5) & six, (6,) in block one hundred and thirty-seven, (137,) in the east division of Denver City, as surveyed by Frederick J. Ebert; to have & to hold the same, together with all & singular the appurtenances & privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, & claim whatsoever of the said party of the first part, either in law equity, to the only proper use, benefit & behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part
the aforesaid lots or pieces of land unto the said party of the
62 second part, his heirs and assigns, against the claim or claims of all and every person whatsoever, claiming or to claim the same by, through, or under the party of the first part, doth and will warrant & forever defend by these presents.

In witness whereof the said party of the first part *have* hereunto set *their* hand*s* and seal*s* the day and year first above written.

JUDSON H. DUDLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
RICHARD E. WHITSITT.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alfred Sayre, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Judson H. Dudley, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, & acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this 21st day of January, A. D. 1867.

[OFFICIAL SEAL.] ALFRED SAYRE,
Notary Public.

63 (Copy of endorsement on the foregoing:) 21 L. Warranty deed. Judson H. Dudley to John Alexander. Filed for record November 4th, A. D. 1867, at 4½ o'clock p. m.

Sheriff's sale.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

By virtue of an execution and order of sale issued out of the office of the clerk of the district court of the first judicial district of Colorado Territory, sitting within and for the county of Arapahoe, and to me directed, whereby I am commanded to make the sum of five thousand six hundred and forty-two dollars and eighty cents, together with interest thereon, and the further sum of twenty-nine dollars and fifty cents, costs of suit, on a certain judgment heretofore rendered and entered of record in the records of said court, in favor of A. E. and C. E. Tilton

and against Judson H. Dudley, I will expose for sale, at public vendue, at the front door of the court-house in the city of Denver, Colorado Territory, on the tenth day of December, A. D. 1869, at the hour of 10 o'clock a. m., to the highest and best bidder, for cash, the following-described real estate, to wit: Lots five (5) and six, (6,) in block ninety-
64 four; lots eleven and twelve, in block seventy-eight; lots twenty-nine and thirty, in block seventy-eight; lots fifteen and sixteen, in block sixty-two; lots thirteen and fourteen, in block one hundred and twenty-nine; lots twenty five and twenty-six, in block two hundred and nine; lots eleven and twelve, in block one hundred and ninety-four; lots twenty-one and twenty-two, in block one hundred and seventy-five; lots twenty-seven and twenty-eight, in block one hundred and fifty-nine; lots five and six, in block one hundred and thirty-seven; lots seventeen and eighteen, in block eleven; lots seven and eight, in block six; lot thirty-one, in block one hundred and twenty-seven, in east division, Denver City; also lot seven, in block sixty-three; lot four, in block forty-one; lot eight, in block sixty-five; lot two, in block forty; lot eight, in block sixty-three, in the west division of the city of Denver, all in the county of Arapahoe and Territory of Colorado, together with all and singular the appurtenances thereunto belonging, heretofore taken upon a writ of attachment wherein the said A. E. and C. E. Tilton were plaintiffs, Judson H. Dudley, Judson H. Dudley implicated with one Thomas P. Ames, were defendants, as the property of Dudley, and hereby offered for sale upon said judgment, which was obtained in said proceedings by attachment.

D. J. COOK, *Sheriff.*

Nov. 19-dtf.

65 *Sheriff's sale.*

TERRITORY OF COLORADO,
County of Arapahoe, ss:

Taken by virtue of an execution, issued out of the office of the clerk of the district court for the first judicial district, sitting within and for the county of Arapahoe, in the Territory of Colorado, to me directed, whereby I am commanded to make the sum of five thousand six hundred and forty-two dollars and eighty cents, damages and interest thereon from November 1st, 1869, and the further sum of twenty-nine dollars and fifty cents costs. I have levied upon and will expose for sale at public vendue, at the front door of the court-house in Denver, C. T., on the eighth day of December, A. D. 1869, at 1 o'clock *a.* m., to the highest and best bidder, the following-described property, to wit: Lots five and six, in block ninety-four; lots eleven and twelve, in block seventy-eight; lots twenty-nine and thirty, in block seventy-eight; lots fifteen and sixteen, in block sixty-two; lots thirteen and fourteen, in block one hundred and twenty-nine; lots twenty-five and twenty-six, in block two hundred and nine; lots eleven and twelve, in block one hundred and ninety-four; lots twenty-one and twenty-two, in block one hundred and seventy-five; lots twenty-seven and twenty-eight, in
66 block one hundred and fifty-nine; lots five and six, in block one hundred and thirty-seven; lots seventeen and eighteen, in block eleven; lots seven & eight, in block six; lot thirty-one, in block one hundred and twenty-seven, in east division of Denver City; also lot seven, in block sixty-three; lot four, in block forty-one; lot eight, in block sixty-five; lot two, in block forty; lot eight, in block sixty-three, in the west division of the city of Denver, all in the county of Arapahoe and Terri-

tory of Colorado, together with all and singular the appurtenances thereunto belonging; taken as the property of Judson H. Dudley, seized and taken in execution at the suit of Alfred E. Tilton and Charles E. Tilton, partners as A. E. & C. E. Tilton, against Judson H. Dudley. Terms and conditions of sale, cash.

D. J. COOK, *Sheriff.*

Nov. 19-dtd.

EXHIBIT N.

This deed, made this sixth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, between Joseph B. Cofield, Daniel Witter, Amos Steck, and Richard E. Whitsitt, of the county of Arapahoe and Territory of Colorado, of the first part, and John Roche, of the county of Arapahoe and Territory of Colorado of the second part,
witnesseth that the said party of the first part, for and in consid-
67 eration of the sum of one dollar to the said parties of the first part
in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following described lot or piece of land, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit: Being lot number 4, (four,) in block number forty-one, (41,) in the west division of Denver City; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever, against the claim or claims of all and every person whatsoever, claiming or to claim the same by, through, or under the parties of the first part, doth and will warrant and forever defend by these presents.

In witness whereof the said party of the first part has hereunto set their hands and seals the day and year first above written.

	(S'g'd)	DANIEL WITTER.	[SEAL.]
	(Signed)	JOSEPH B. COFIELD.	[SEAL.]
68	(S'g'd)	AMOS STECK.	[SEAL.]
	(S'g'd)	RICHARD E. WHITSITT.	[SEAL.]

Signed, sealed, and delivered in presence of—
EDWARD P. JONES.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Edward P. Jones, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Daniel Witter, Joseph B. Cofield, Amos Steck, Richard E. Whitsitt, personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this sixth day of January, A. D. 1869.

[NOTARIAL SEAL.] (S'g'd) EDWARD P. JONES,
Notary Public.

(Endorsed) Warranty deed. Joseph B. Cofield, Daniel Witter, Amos Steck, & other to John Roche. Filed for record January 8th, 1869, at 2 o'clock p. m. (Sig'd) W. D. Anthony, recorder.

69 1773.

EXHIBIT N.

To the clerk of the district court:

You will issue a temporary writ of injunction, as prayed for in this bill, on the complainant's filing a bond in the sum of thirteen thousand dollars, with security to be approved by the clerk of district court, with conditions according to law.

C. S. EYSTER, *Judge.*

(Endorsed:) 1773. Exhibit N. Filed Dec'r 7th, 1869. O. A. Whittemore, clerk.

And afterwards, on the 9th day of December, A. D. 1869, summons issued out of and under the seal of said court against the said Alfred E. Tilton, Charles E. Tilton, David J. Cook, Judson H. Dudley, and John Alexander, in pursuance of the prayer of said bill, which said summons, together with the officer's return of service thereon, is in the words and figures following, to wit:

TERRITORY OF COLORADO,
Arapahoe County, ss:

70 The people of the Territory of Colorado to the coroner of Arapahoe County, greeting:

We command you to summon Alfred E. Tilton, Charles E. Tilton, David J. Cook, Judson H. Dudley, and John Alexander, if they shall be found in your county, personally to be and appear before the district court of said county on the first day of the next term thereof, to be holden at the court-house, in the city of Denver, in said Arapahoe County, on the 3d Tuesday of January next, A. D. 1870, to answer unto Joseph B. Cofield, Daniel Witter, Amos Steck, Richard E. Whitsitt, Erastus F. Halleck, Charles Halleck, and John Roche in a certain bill of complaint, to vacate a certain judgment and order of sale filed in the said court, on the chancery side thereof, and have you then and there this writ, with a return thereon, showing in what manner you have executed the same.

{ SEAL DISTRICT COURT ARAPAHOE COUNTY, COLORADO. } Witness Oliver A. Whittemore, clerk of the district court of said county, and the seal thereof, at said city of Denver, this 9th day of December, A. D. 1869.

OLIVER A. WHITTEMORE, *Clerk.*

(Endorsed:) G. D. No. 1773. Chancery summons, district court. In the matter of Joseph B. Cofield et al. vs. Alfred E. Tilton et al. January term, A. D. 1870.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I certify that I served the within writ on the within-named David J.

Cook by reading the same to him this 10th day of December, 1869. None of the other defendants were found in said county.

JOSIAH C. STOUT, *Elisor.*

Fees: Service, $1.50; mileage, 20; return, 75—$2.45.

Filed in this court this 26th day of February, 1870. O. A. Whittemore, clerk.

71 And afterwards, to wit, on the 17th day of December, A. D. 1869, there was filed in the office of the clerk of said court a certain affidavit that the said defendants Alfred E. Tilton and Charles E. Tilton were non-residents of the Territory of Colorado, and that the said defendants, Judson H. Dudley and John Alexander could not be found within the Territory of Colorado; whereupon a certain notice for publication was issued out of the office of the clerk of said court, which said notice, together with the certificate of publication thereof, is in the words and figures following, to wit:

Notice.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of Colorado Territory, sitting within and for said county of Arapahoe, to the January term, A. D. 1870.

JOSEPH B. COFIELD, DANIEL WITTER, AMOS Steck, Richard E. Whitsitt, Erastus F. Halleck, Charles Halleck, and John Roche, complainants,
vs.
ALFRED E. TILTON, CHARLES E. TILTON, JUDSON H. Dudley, David J. Cook, and John Alexander, defendants. } In chancery.

72 Affidavit having been filed in the office of the clerk of the district court of the first judicial district aforesaid showing that you, the above-named Alfred E. Tilton and Charles E. Tilton, are both non-residents of Colorado Territory, so that process cannot be served on either of you, and also that you, the said Judson H. Dudley and John Alexander, on due inquiry, cannot be found in said Territory of Colorado, so that process cannot be served on you or either of you, you and each of you will take notice that the above-named complainants, Joseph B. Cofield and others, filed in said court, on the chancery side thereof, on the 7th day of December, A. D. 1869, their certain bill of complaint against you, the said Alfred E. Tilton, Charles E. Tilton, Judson H. Dudley, and John Alexander, and also David J. Cook, the above-named defendants, to vacate a certain judgment and order of sale; and thereupon a summons was issued out of and under the seal of said court against you, the said Alfred E. Tilton, Charles E. Tilton, John Alexander, Judson H. Dudley, and David J. Cook, defendants, returnable to the term of said court to be begun and holden at the court-house in Denver, in said Arapahoe County, on the third Tuesday (it being the eighteenth day) of January, A. D. 1870, which summons was returned not found as to you, the said Alfred E. Tilton, Charles E. Tilton, Judson

H. Dudley, and John Alexander, and that said suit is still pending and undetermined in said court.

73 Now, unless you, the said Alfred E. Tilton, Charles E. Tilton, Judson H. Dudley, and John Alexander, defendants, shall be and appear at said court on the first day of the next term thereof, to be holden at the court-house in Denver as aforesaid, and plead, answer, or demur to the said complainants' bill of complaint, the same, and the matters and things therein contained, will be taken as confessed as against you and each of you, and a decree entered accordingly.

OLIVER A. WHITTEMORE, *Clerk.*

E. L. SMITH, ALFRED SAYRE,
J. BRIGHT SMITH, AMOS STECK, and
W. C. KINGSLEY, *Complainants' Solicitors.*

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, John Walker, of said county of Arapahoe, do hereby certify that I am one of the publishers and proprietors of the Colorado Tribune, a daily and weekly newspaper printed and published in Denver, in said county and Territory, and I further certify that the notice, of which the annexed is a true copy, has been published in said newspaper for four successive weeks and times, and that the first publication of said notice was in said paper bearing date the 18th day of Dec., A. D. 1869, and the last publication of said notice was in said paper bearing date the 18th day of January, A. D. 1870.

In witness whereof I have hereunto set my hand this 28th day
74 of Dec., A. D. 1870.

JOHN WALKER.

(Endorsed:) 1773. J. B. Cofield et al. vs. A. E. & C. E. Tilton. Certificate of publication. Filed January 9, 1871. O. A. Whittemore, clerk.

And afterwards, to wit, on the 25th day of December, A. D. 1869, came the defendants, Alfred E. Tilton and Charles E. Tilton, by their solicitors, and filed in said court their demurrer to the bill of complaint herein; which said demurrer is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Arapahoe:

In the district court of the first judicial district of Colorado Territory, within and for the county aforesaid, to the January term, A. D. 1870.

JOSEPH B. COFIELD ET AL.
vs.
ALFRED E. TILTON ET AL. } In chancery.

The demurrer of Alfred E. Tilton and Charles E. Tilton, defendants, to the bill of complaint of Joseph B. Cofield et al., complainants.

These defendants, respectively, by protestation, not confessing
75 or acknowledging all or any of the matters and things in the said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show that the said complainants have not, in and by their

said bill, made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against these defendants; wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

CHARLES & ELBERT,
Solrs. for Defts.

(Endorsed:) 1773. Joseph B. Cofield et al. vs. Alfred E. Tilton et al. Demurrer. Filed December 25th, 1869. O. A. Whittemore, clerk. Charles & Elbert, solrs. for defts.

And afterwards, to wit, on the 22nd day of July, A. D. 1870, the same being one of the regular judicial days of the June term, A. D. 1870, of said court, the following proceedings were had and entered of record in said court in said cause, to wit:

76, 77 JOSEPH B. COFIELD ET AL.
vs.
A. E. & C. E. TILTON. } In chancery.

Now on this day comes W. C. Kingsley, esq., solicitor for complainants, and on his motion leave is given to said complainants to file an amended bill in this cause.

And afterwards, to wit, on the 19th day of September, A. D. 1870, came the said complainants, by their solicitors, and filed in said court their amendments to the bill of complaint herein; which said amendments are in words and figures as follows, to wit:

78 TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of Colorado Territory, within and for the county of Arapahoe. In chancery sitting, of the January term, A. D. 1870.

JOSEPH B. COFIELD, DANIEL WITTER, R. E. Whitsitt, Amos Steck, John Roche, E. F. Halleck, and Charles Halleck, complainants,
vs.
A. E. TILTON, C. E. TILTON, JUDSON H. DUDley, John Alexander, and David J. Cook, dedefendants.

Amendments to the bill of complaints in this cause, made in pursuance to an order of the said court at the June term thereof, on the day of July, A. D. 1870.

First. In the 5th line of the 1st folio of the said bill, after the word "term," strike out the figures "1869," and insert in their place the figures "1870."

Second. In the 10th line of the 4th folio of said bill, after the word "suit," insert "according to such complaint."

Third. In the second line of the 8th folio, after the word "complaint," interline "That at the December term, 1865, of said court, to
79 wit, on the 27th day of January, 1866, the said A. E. & C. E. Tilton recovered in said attachment suit a judgment against the said Dudley for the sum of $2,591.44 and costs, taxed at $18.05."

Fourth. In the 5th line of the 8th folio, after the word "Steck," interline "after the recovery of the judgment aforesaid, to wit, on the 23 day of May, A. D. 1867."

Fifth. In the first line of the 27th folio, after the word "that," insert "after the said judgment had been reversed for error by the supreme court of said Territory, to wit."

Sixth. In the 5th line of the 27th folio, after the word "filed," interline "in said district court."

Seventh. In the 11th line of the 37th folio, before the word "and," interline "and your orators further represent that the filing of the amended affidavit and amended declaration as aforesaid changed the cause of action, and also enlarged the demand in said suit, and also changed the nature of the indebtedness said to be due from the said Dudley and Ames to the said Tiltons; and that the judgment recovered upon said amended affidavit and amended declaration was for a much greater sum and amount than could have been recovered on the original affidavit and declaration, and was a fraud upon the rights of your orators, all of which was well known to the said Tiltons; that the said Tiltons claim the right, and threatened to collect the said judgment
80 so recovered upon said enlarged demand and new indebtedness from and by the sale of the said lots so owned by your orators, and the said Jager; all of which is and will be a cheat and fraud upon your orators, and will work an irreparable injury to them, who were notified of the demands of the said Tiltons in the said suit at the time of the several conveyances to them as before stated, and to the extent only of the judgment first recovered upon the original affidavit and declaration as aforesaid, and all of which was well known to the said Tiltons."

Eighth. In the 4th line of the 47th folio, after the word "land," strike out the following words, to wit: "May it please your honor to grant unto your orators," and insert in their place the following words, to wit: "and also that."

Ninth. In the 7th line of the 47th folio, after the word "chancery," interline the words "may issue."

JOSEPH B. COFIELD.
DANIEL WITTER.
RICHARD E. WHITSITT.
JOHN ROCHE.
AMOS STECK,
By his atty. & agent, E. L. SMITH.
E. F. HALLECK.
CHAS. HALLECK.

ALFRED SAYRE,
Solr. for John Roche.
E. L. SMITH,
Solr. for J. B. Cofield.
E. L. SMITH and W. C. KINGSLEY,
Solrs. for Danl. Witter, Whitsitt, Steck, E. F. and Chas. Halleck.

TERRITORY OF COLORADO,
County of Arapahoe, ss :

81 Joseph B. Cofield, Erastus F. Halleck, Charles Halleck, Daniel Witter, Richard E. Whitsitt, John Roche, and Amos Steck, complainants in the above-named cause, state on oath that they have heard the foregoing amendments to the bill of complaint in said cause by them subscribed read, and know the contents of such amendments, and each for himself says that the same are true so far as therein stated on their own knowledge, and as to the matters therein stated to be on information and belief they believe them to be true.

JOSEPH B. COFIELD.
DANIEL WITTER.
RICHARD E. WHITSITT.
JOHN ROCHE.
E. L. SMITH,
Attorney & agent of AMOS STECK.
E. F. HALLECK.
CHARLES HALLECK.

DANIEL SAYRE, NOTARY PUBLIC, COLORADO, DENVER, ARAPAHOE CO.

Subscribed and sworn to beforeme this 19th day of September, A. D. 1870.
DANIEL SAYER,
Notary Public.

(Indorsed:) 1773. Cofield et als. vs. Tilton et als. Amendments to bill. Filed September 19th, 1870. Oliver A. Whittemore, clerk.

82, 83 And afterwards, to wit, on the 31st day of October, A. D. 1870, came the said defendants, Alfred E. Tilton and Charles E. Tilton, by their solicitors, and filed in said court their answer to the amended bill of complaint herein; which said answer is in words and figures following, to wit:

84 TERRITORY OF COLORADO,
County of Arapahoe :

In the district court of the first judicial district of Colorado Territory, within and for the county aforesaid, of the October term, A. D. 1870.

JOSEPH B. COFIELD ET AL.
vs.
ALFRED E. TILTON ET AL.
In chancery.

The answer of Alfred E. Tilton and Charles E. Tilton, defendants, to the amended bill of complaint of Joseph B. Cofield et al., complainants.

These defendants, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said amended bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

They admit the commencement of the attachment suit against Dudley and Ames, as alleged in the amended bill of complaint.

They admit the issuing of the writ of attachment in said suit and the

levy of said writ on the real estate described, as alleged in said amended bill of complaint.

They admit the filing of the declaration in said suit, as alleged in said amended bill of complaint.

They admit that the complainants, Joseph B. Cofield, Daniel
85 Witter, Richard E. Whitsitt, and Amos Steck, pretended to purchase a portion of said real estate levied upon from the said Dudley after the levy of the writ of attachment in said suit; but as to the amount paid by said complainants to the said Dudley or to the said Moffatt, for his use; by what authority the said Moffatt sold and conveyed the same to the said complainants; whether or not he was the duly authorized agent or attorney in fact of the said Dudley; whether or not the said Charles G. Chever was the duly authorized agent or attorney in fact of the said Dudley, and made the conveyance to the said Moffatt as alleged in said amended bill of complaint; whether or not the said Moffatt held the said real estate as security for the payment of any sum of money due from the said Dudley to the said Moffatt; whether or not the said conveyances were made and delivered at the times, in the manner, under the dates, by and to the persons named, as alleged in said amended bill; whether or not the said Whitsitt held the legal title to said real estate or any portion or interest therein in trust for the said Steck as alleged; whether or not the said deed from the said Moffatt to the said Cofield, Wilter, and Whitsitt was recorded as alleged; whether or not the said Whitsitt conveyed any portion of said real estate or any interest therein to the said Steck; and whether or not the said complainants, Cofield, Witter, and Whitsitt, conveyed any portion of said real estate to John G. Jager, as alleged in said amended bill of complaint, these defendants are not advised, and
86 neither admit or deny, but pray the court that the said complainants may be required to make strict proof of all and singular the foregoing allegations as set forth and alleged in the amended bill of complaint.

Defendants deny that the said Cofield, on the 23d day of May, A. D. 1867, was the owner of or entitled to the possession of any portion of said real estate, or that he is now or has been since said date the owner of or entitled to the possession of any portion of or interest in said real estate, as alleged in said amended bill of complaint.

Defendants deny that the said Daniel Witter is now or has been since the 23d day of May, A. D. 1867, the owner of or entitled to the possession of any part of or interest in said real estate, as alleged in said amended bill of complaint.

Defendants deny that the said Whitsitt and Steck, or either of them, is or has been the owner of or entitled to the possession of any portion of or interest in said real estate or any part thereof, as alleged in said amended bill of complaint.

Defendants neither admit or deny that the complainant Cofield conveyed to the said Witter and Whitsitt a portion of said real estate, as alleged in said amended bill of complaint, and pray that the said complainants may be required to make strict proof of the same, as alleged.

87 Defendants neither admit or deny that the defendant Dudley conveyed a certain portion of said real estate to one John Alexander, or that the said Alexander conveyed a certain portion of said real estate to one Erastus F. Halleck and Charles Halleck, as is set forth in the said amended bill of complaint, and pray that the said complain-

ants may be required to make strict proof of the same as alleged in said amended bill of complaint.

Defendants deny that the said Erastus F. Halleck and Charles Halleck, or either of them, ever have been or are the owners of or entitled to the possession of any portion of said real estate or any interest therein, as is alleged in said amended bill of complaint.

Defendants deny that they ever had notice of any of the conveyances set forth and alleged in said amended bill of complaint, or of the filing of the same for record.

Defendants deny that the complainant John Roche is or has been the owner of or entitled to the possession of any portion of or any interest in said real estate, as alleged in said amended bill of complaint.

Defendants neither admit or deny that the complainants Cofield, Whitsitt, Witter, and Steck attempted to convey a portion of said real estate to the said Roche, as is alleged in said amended bill of complaint, and pray that the said complainants may be required to make
88 strict proof of the allegations relating thereto.

Defendant admits the filing of the amended affidavit in said attachment suit on the 12th day of September, A. D. 1868, as alleged in said amended bill.

Defendants admit the filing of an amended declaration in said attachment suit on the said 12th day of September, A. D. 1868, as alleged in said amended bill.

Defendants admit the power of attorney from the said Dudley to L. B. France, as set forth and alleged in said amended bill of complaint.

And admit that the said France, in pursuance of said power of attorney, confessed judgment in said attachment suit, as alleged in said amended bill of complaint.

Defendants admit that the said district court rendered judgment in said attachment suit on the confession of judgment filed by said France, as alleged in said amended bill of complaint, and that execution issued thereon.

Defendants deny that the said complainants, or either of them, purchased said property or any part thereof or interest therein in good faith or without notice of the defendants' rights and equities in the premises.

Deny that the complainants had no knowledge of the indebtedness of the said Dudley and Ames to these defendants on said account and promissory note.

And defendants, further answering, aver that the said complainants had full notice of the pendency of said attachment suit and of the levy of said writ of attachment on said real estate at the time
89 of their pretended purchase; and further aver that they are informed and believe that the said complainants Cofield, Witter, Steck, and Whitsitt, at the time of their pretended purchase, had notice of the existence of the said promissory note set forth in the said amended declaration, and that the said note was given for and consideration of the goods, wares, and merchandise mentioned in the original affidavit in said attachment suit.

The defendants, further answering, say that the said note mentioned in said amended declaration was given by the said Dudley and Ames to these defendants in consideration of the goods, wares, and merchandise mentioned in the original affidavit and declaration in the said attachment suit, and to secure them in the payment thereof.

And these defendants further aver that the difference between the amount of said account set forth in the original affidavit and declara-

tion and the said promissory note was owing to certain errors made in stating said account, and which were corrected at the time of the execution of said note.

And for further answer these defendants say that they are informed and believe, and allege the fact to be that, the said complainants Witter, Whitsitt, Steck, and Cofield, at the time of the purchase of the said real estate claimed by them from the said Dudley, agreed with the said Dudley that they, the said complainants, would pay the said indebtedness mentioned in said promissory note of Dudley and Ames
90 to these defendants as a part payment for said lots, and that the payment by the said complainants of said indebtedness was part of *of* the consideration for the sale of said real estate to the said Witter, Steck, Whitsitt, and Cofield, and that the said complainants purchased said real estate subject to the said debt of Dudley and Ames to these defendants.

These defendants deny that the amendments made by their attorneys in said attachment suit was for a different cause of action; deny that the amendments changed the cause of action; deny that said amendments were a fraud upon the rights of the complainants, but allege that the said amended declaration and affidavit were for the same cause of action.

And for further answer these defendants say that the bill of particulars attached to the original declaration in said attachment suit and the bill of particulars attached to the amended declaration in said suit are for the same goods, wares, and merchandise, and are identical in the items set forth, to which these defendants, for greater certainty, beg leave to refer on the hearing of this cause.

Defendants further say that a certificate of the levy of the writ of attachment in said real estate in said attachment suit was duly filed by the sheriff making said levy in the office of the clerk & recorder of the county of Arapahoe & Territory of Colorado, according
91 to the statute in such case made and provided, to which certificate these defendants beg leave to refer for greater certainty on the trial of this cause.

Defendants deny each and every allegation in said amended bill of complaint not herein specially admitted, and deny all manner of combination and confederacy wherewith they are charged, without this, that there is any other cause, matter, or thing in said amended bill of complaint necessary for these defendants to answer unto and not herein full and sufficiently answered is true, to the knowledge of these defendants; all of which matters and things these defendants are willing to aver and prove as the court shall direct, and humbly pray to be hence dismissed with their costs and charges in this behalf expended.

CHARLES E. TILTON,
ALFRED E. TILTON,
By CHARLES & ELBERT,
Their Solicitors.

TERRITORY OF COLORADO,
Arapahoe County:

Albert K. Tilton, of lawful age, being first duly sworn, on oath deposeth and says that he is the duly authorized agent of the said A. E. & C. E. Tilton, the defendants herein; that he has heard the foregoing answer read, and knows the contents thereof, and that the matters
92 and things therein set forth are true of his knowledge, except such matters and things as are alleged on information and belief, and as to those matters he believes to be true.

ALBERT K. TILTON.

Subscribed and sworn to before me this 31st day of October, A. D. 1870.

OLIVER A. WHITTEMORE, *Clerk.*

(Endorsed:) 1773. Joseph B. Cofield et al. vs. Charles E. Tilton et al. Answer. Filed October 31st, 1870. Oliver A. Whittemore, clerk. Charles & Elbert, solicitors for deft.

And afterwards, to wit, on the 9th day of November, A. D. 1870, came the said complainants, by their solicitors, and filed in said court their exceptions to the answer of the said defendants herein; which said exceptions are in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of the Territory of Colorado, in and for the aforesaid county.

93 JOSEPH B. COFIELD, AMOS STECK, Richard E. Whitsitt, et als., *vs.* ALFRED E. TILTON ET ALS.

Exceptions taken by the complainants in the above cause to the answer put in by the defendants, Alfred E. Tilton and Charles E. Tilton, to the said complainants' bill of complaint.

First. For that the said defendants have not, to the best of their respective knowledge, information, and belief, answered and set forth whether the said defendants, Alfred E. Tilton and Charles E. Tilton, by their agent, Alexander Davidson, on the 28th day of August, A. D. 1865, filed an affidavit in attachment against Judson H. Dudley, and Thomas T. Ames, partners under the firm name and style of Dudley & Ames, to satisfy a claim or demand of the said Alfred E. and C. E. Tilton, in the sum of two thousand six hundred and twenty dollars and eighty cents, for goods, wares, and merchandise theretofore sold and delivered to the said Dudley and Ames.

Second. For that the said defendants have not, to the best of their respective knowledge, information, and belief, answered and set forth whether, at the December term, A. D. 1865, of said court, to wit. on the 27th day of January, A. D. 1866, the said A. E. & C. E. Tilton recovered in said attachment suit a judgment against the said Dudley for the sum of $2,591.44 & costs, taxed at $18.05.

Third. For that the said defendants have not answered whether
94 the said complainants, after the recovery of the judgment aforesaid, to wit, on the 23d May, 1867, purchased from the said Judson H. Dudley all the lots or parcels of land levied upon by virtue of the writ of attachment aforesaid, except lots 5 & 6, in block 137, and lots 17 & 18 in block 11, in the east division of the city of Denver, & lots 8, in block 65, and 2, in block 40, in the west division of the city of Denver.

Fourth. For that the said defendants have not answered whether the filing of the amended affidavit & amended declaration enlarged the demand in the attachment suit, as is alleged & set forth in the said complainants' bill.

Fifth. For that the said defendants have not answered, as set forth,

whether the judgment recovered upon such amended affidavit & amended declaration was for a much greater sum and amount than could have been recovered on the original affidavit and declaration.

In all which particulars the said answer is, as the said complainants are advised, imperfect, insufficient, & evasive, & the said complainants therefore except thereto and pray that the said defendants may put in a further and better answer to said bill of complaint.

JOSEPH B. COFIELD,
DANIEL WITTER,
RICHARD E. WHITSITT,
JOHN ROCHE,
AMOS STECK,
E. F. HALLACK,
CHARLES HALLACK,
Compl'ts.

By E. L. SMITH, *their Solicitor.*

95 (Endorsed:) Cofield et als. vs. Tilton et als. Exceptions to answer. Filed November 9th, 1870. Oliver A. Whittemore, clerk.

And afterwards, to wit, on the 21st day of November, A. D. 1870, came the said complainants, by their solicitors, and filed in said court their replication to the answer of the said defendants, Alfred E. Tilton and Charles E. Tilton; which said replication is in the words and figures following, to wit:

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of Colorado Territory, in and for the said county. January term, A. D. 1871.

JOSEPH B. COFIELD, RICHARD E. WHITSITT, Amos Steck, Daniel Witter, Erastus F. Hallack, Charles Hallack, and John Roche
vs.
ALFRED E. TILTON, CHARLES E. TILTON, et als.
} In chancery.

The replication of the said above-named complainants to the answer of the said defendants, Alfred E. Tilton and Charles E. Tilton.

96 These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

By their solicitors,

ALFRED SAYRE.
AMOS STECK.
W. C. KINGSLEY.
E. L. SMITH.

(Endorsed:) 1773. Alfred E. Tilton et als. vs. Joseph B. Cofield et als. Replication. Filed January 7th, 1871, as of Nov. 21, 1870. O. A. Whittemore, clerk.

And afterwards, to wit, on the 21st day of November, A. D. 1870,
97 it still being of the June term A. D. 1870, of said court, the following other proceedings were had and entered of record in said court in said cause:

JOSEPH B. COFIELD ET AL.
vs.
A. E. & C. E. TILTON. } In chancery.

Now on this day comes the said complainants, by E. L. Smith, esq., their solicitor, and the said defendants, by Messrs. Charles & Elbert, their solicitors, also come, and thereupon came on to be heard the exceptions of the said complainants to the answer of the defendants herein; and the court being advised in the premises, it is considered by the court that said exceptions be overruled; and thereupon it was ordered that this cause be referred to the master in chancery of this court to take proof of the allegations of the said bill of complaint.

And afterwards, to wit, on the third day of January, A. D. 1871, came the said defendant Judson H. Dudley, and filed in said court his answer to the amended bill of complaint herein; which said answer is in words and figures as follows, to wit:

THE TERRITORY OF COLORADO,
Arapahoe County, ss:

In the district court of said Territory for the first judicial district, and for said county.

JOSEPH B. COFIELD ET AL.
vs.
ALFRED E. TILTON ET AL. } In chancery.

98 The answer of Judson H. Dudley, one of the defendants, to the amended bill of complaint of Joseph B. Cofield et al. complainants.

This defendant, now and at all times reserving to himself all manner of benefit or advantage of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said amended bill of complaint contained, for answer to the said amended bill of complaint, or to said parts thereof as this defendant is advised it is material and necessary to make answer unto, answering, says:

He admits the commencement of the suit in attachment against Dudley & Ames; the issuing of the writ of attachment, and levy in virtue of the same; the filing of the affidavit for the said writ of attachment, & bond, declaration, bill of particulars, and all other papers and proceedings in said suit, as stated in the said amended bill of complaint.

He admits the execution of the said deed to the said complainants Cofield, Witter and Whitsitt, by the said Moffat, for the sum of five thousand and one hundred dollars, paid him, as stated in said amended bill of complaint.

He admits the execution of the power of attorney to the said L. B.

France, authorizing the confession of judgment on the promissory note, as stated in the said amended bill of complaint.

99 He admits the sale of the said lots mentioned in the said amended bill of complaint to said Alexander, and the execution of the deed for the same, as stated in said amended bill of complaint.

And defendant, further answering, says that the execution of the said power of attorney was made at the request of the said defendants A. E. & C. E. Tilton, upon the consideration and promise of the said Alfred E. Tilton that the said Tiltons would release the said defendant Dudley from the payment of the said personal judgment authorized to be confessed by the said France upon the said promissory note, and would take the said judgment against the said lots so attached as aforesaid for the payment of said promissory note and the interest thereon, as specified therein.

And the said Dudley, defendant, further answering says, that the said promissory note was issued by the said Thomas P. Ames to the said A. E. & C. E. Tilton, in the name of Dudley & Ames, without the knowledge of the said defendant Dudley, and without his consent; and was given by the said Ames for his share of the capital stock invested by him in the purchase of goods, wares, and merchandise from A. E. & C. E. Tilton, in a venture undertaken by the said Dudley & Ames, and the said goods, wares, and merchandise so purchased by said Ames, and for which said promissory note was given, formed no part of the copartnership debts of the said Dudley & Ames, but was wholly the capital stock of said Ames in said enterprise or venture.

100 J. H. DUDLEY.

(Endorsed:) 1773. J. B. Cofield et al. vs. A. E. & C. E. Tilton, et al. Answer of J. H. Dudley. Filed January 3d, 1871. Oliver A. Whittemore, clerk.

And afterwards, to wit, on the 9th day of January, A. D. 1871, the same being one of the regular juridical days of the January term, A. D. 1871, of said court, the following further proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD ET AL. vs. A. E. & C. E. TILTON ET AL. } In chancery.

Now, on this day, come the said complainants, by Messrs. J. B. & E. L. Smith, A. Sayre, Amos Steck, and W. C. Kingsley, their solicitors, and move the court for a default herein against John Alexander, one of said defendants, and the said defendant, although he is three times solemnly called in open court, comes not, but herein wholly makes failure and default, and thereupon it is ordered that the default of the said defendant be entered of record.

And afterwards, to wit, on the 13th day of September, A.
101 D. 1872, came J. R. Elvans, esq., master in chancery, to whom this cause was referred to take proofs, and filed in said court his report of evidence taken in this behalf, which said report is in words and figures as follows, to wit:

102 TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of the Territory of Colorado within and for the county of Arapahoe.

JOSEPH B. COFIELD ET AL.
vs.
ALFRED E. TILTON ET AL. } term. In chancery.

Master's report.

To the honorable the district court for the first judicial district of Colorado Territory in and for the county of Arapahoe, in chancery:

In pursuance of an order of this honorable court, made in the above cause on the twenty-first day of November, A. D. 1870, I, the undersigned, a master in chancery of said court, do report:

That I was attended by E. L. Smith and W. C. Kingsley, solicitors for the complainants, and by Charles & Elbert, solicitors for the defendants, on the twenty-first (21) day of October, A. D. 1871, at my office in the city of Denver in said county.

103 The solicitors for the complainants here offer in evidence paper marked "Exhibit 1," together with the certificate of record endorsed thereon, to which the defendants' solicitors object on the ground that it is a general power of attorney and does not specify the property to be sold; and 2nd, that it is not under seal. Said exhibit is hereto attached and made part of this report.

Complainants' solicitors now offer in evidence paper marked "Exhibit 2," and the certificate of record thereon endorsed, to which solicitors for defendants object on the ground that Charles G. Chever had no authority to execute said deed as attorney in fact for Judson H. Dudley.

Said Exhibit 2 is hereto attached and made part of this report.

Complainants' solicitors now offer in evidence paper marked "Exhibit 3," and the certificate of record thereon endorsed, to which defendants' solicitors object. Said Exhibit 3 is hereto attached and made part of this report.

Complainants' solicitors now offer in evidence paper marked "Exhibit 4," and the certificate of record thereon endorsed, to which defendants' solicitors object. Said Exhibit 4 is hereto attached and

104 made part of this report.

Complainants' solicitors now offer in evidence paper marked "Exhibit 5," and the certificate of record thereon endorsed, to which the defendants' solicitors object. Said Exhibit 5 is hereto attached and made part of this report.

Complainants now offer in evidence paper marked "Exhibit 6," and the certificate of record thereon endorsed, to which the defendants' solicitors object. Said "Exhibit 6" is hereto attached and made part of this report.

JUDSON H. DUDLEY, being produced and sworn on the part the complainants, testifies as follows:

1. Ques. Look at the paper marked "Exhibit 2," and state whether the same was made, executed, and delivered by or with your consent or knowledge.

(Solicitors for defendants object, in that it is immaterial and incompetent.)

1. Ans. It was.

2. Ques. State whether or not, subsequent to the date of said Exhibit 2, you became advised of its contents and purport; and, if so, about how soon after, and whether the said deed marked "Exhibit 2" was confirmed or ratified by you; and, if so, at what time?

(Solicitors for defendants object, in that the question is immaterial and incompetent.)

105 2. Ans. I became advised of the execution of this deed; unable to say how soon after its date. It was confirmed and ratified at the time of my being advised.

3. Ques. Did or did not such ratification by you occur prior to the twenty-third day of May, A. D. 1867?

(Solicitors for defendants object, in that the question is immaterial and incompetent, and because it is not the best evidence.)

3. Ans. I am unable to say positively from any recollection I had; but I think it must have occurred before that date.

4. Ques. State your best recollection as to whether or not the execution of said Exhibit 2 came to your knowledge prior to the twenty-third day of May, A. D. 1867?

(Solicitors for defendants object, in that the question is immaterial and incompetent.)

106 Answer. It did.

5. Question. Now refresh your recollection, and state whether or not the ratification by you of said deed occurred before or after the said twenty-third day of May, A. D. 1867?

(Solicitors for defendants object for immateriality and incompetency.)

5. Ans. I think it did occur before.

6. Ques. State, if you know, for what consideration, if any, Exhibit 2 was executed.

(Objected to by defendants' solicitors as immaterial and incompetent.)

6. Ans. For the consideration mentioned in the instrument.

7. Ques. State for what purpose, if you know, said instrument was given.

(Objected to by defendants' solicitors as immaterial and incompetent.)

7. Ans. For the purpose of securing a loan of twenty-five hundred dollars to me, loaned by David H. Moffat, jr.

107 8. Ques. If you know, state whether or not the said Moffat took said deed with such understanding.

(Objected to by defendants' solicitors as immaterial and incompetent, and not the best evidence.)

8. Ans. He did.

9. Ques. State, if you can, the conditions more fully upon which the said deed to Moffat was given.

(Objected to by defendants' solicitors as immaterial and incompetent.)

9. Ans. Conditions were that I was to pay him twenty-five hundred dollars at three per cent. per month, I think, without any time having been stated for repayment, the transaction being considered a friendly one, upon payment Moffat to re-deed the property to me.

10. Ques. Look at Exhibit 3, now shown you, and state whether or not the same was given with your knowledge and consent, (either or both.)

(Objected to by defendants' solicitors as immaterial and incompetent.)

10. Ans. It was given with both knowledge and consent.

11. Ques. State whether such consent was given before or
108 after the date of said deed.

(Objected to by defendants' solicitors as immaterial and incompetent.)

11. Ans. I think it was given before.

Cross-interrogatories by defendants' solicitors:

1. Ques. In what manner were you informed of the execution of Exhibit 2; and, if by letter, when and by whom was it written, and to whom?

1. Ans. I was informed by letter from Charles G. Chever to me in March or April, 1867.

2. Ques. In what manner did you ratify the execution of Exhibit 2? And, if by letter, to whom was it addressed?

2. Ans. By letter addressed to Mr. Charles G. Chever.

3. Ques. In what manner did you ratify the execution of Exhibit 3?

3. Ans. By letter from me to Mr. Moffat.

Redirect by complainants' solicitors:

109 1. Ques. State whether you ever ratified the execution of Exhibit 2 in any way than by letter; and, if so, how?

(Objected to by defendants' solicitors as being incompetent, improper, and not correct redirect examination.)

1. Ans. In no other way than by receiving the money.

2. Ques. State, if you know, where the letter you refer to, written by Chever to you, is.

(Objected to by defendants' solicitors as incompetent and immaterial.)

2. Ans. It is either lost or destroyed.

3. Ques. If you know, state when and where you last saw it.

(Objected to by defendants' solicitors as incompetent and immaterial.)

3. Ans. I cannot say.

4. Ques. Have you ever searched for it?

(Objected to by defendants' solicitors as incompetent and immaterial.)

4. Ans. I have, among my old papers, and failed to find it.

110 5. Ques. Did you ever ratify Exhibit 3 in any other way than by letter; and, if so, how?

(Objected to by defendants' solicitors as incompetent and immaterial, and as not proper re-direct-examination.)

5. Ans. I have no recollection of ratifying it in any other way.

J. H. DUDLEY.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of Judson H. Dudley was duly taken before me as such master, at the place and time mentioned; that the witness, Judson H. Dudley, before his examination, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness, Judson H. Dudley, was read to him by me, and that the same was signed thereafter by the said Judson H. Dudley in my presence.

JOHN R. ELVANS,
Master in Chancery.

111 Examination adjourned, by consent of counsel, to October 23d, 1871, at nine o'clock a. m.

JOHN R. ELVANS,
Master in Chancery.

OCTOBER 23D, 1874.

Examination of witnesses on the part of the complainants pursuant to adjournment.

DANIEL WITTER, being produced and sworn on the part of the complainants, testifies as follows:

1. Question. Look at the paper now handed you, marked "Exhibit 3," and state if you know what consideration, if any, was given for said deed when it was given; by whom and to whom?

(Objected to by defendant's solictors as irrelevant and incompetent.)

Answer. The consideration was five thousand one hundred dollars. It was made on or about the twenty-third day of May, A. D. 1867. It was contributed in equal amounts by myself, Joseph B. Cofield, and Richard E. Whitsitt, they paying their proportion of the amount to me, and I paying the whole amount to David H. Moffat, jr.

112 2. Question. State, if you know, what relation, if any, the said Moffat sustained toward the property at that time, named in said exhibit, and the nature of his title thereto.

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Answer. He told me at the time the purchase was made that he held the property as security for money he had loaned Dudley in New York City.

(Solicitors for defendant' object to the above answer as heresay and incompetent.)

DANIEL WITTER.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of Daniel Witter was duly taken before me as such master, at the place and time mentioned; that the witness, Daniel Witter, before his examination, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness, Daniel Witter, was read to him by me, and that the

113 same was signed thereafter by the said Daniel Witter in my presence.

JOHN R. ELVANS,
Master in Chancery.

CHARLES G. CHEVER, being duly sworn on the part of complainants, testified as follows:

1. Question. Look at papers marked "Exhibits 8, 9, 10, and 11," and state if you know by whom they were written, and whose signature is attached thereto.

(Question waived and withdrawn.)

2. Question. Are you acquainted with the handwriting of Judson H. Dudley?

Answer. I am.

3. Question. Look at papers marked "Exhibits 8, 9, 10, 11," and state if you know by whom they were written, and whose signature is attached thereto.

Ans. They were written by Judson H. Dudley, and his signature is attached to them.

4. Question. State to whom they were written.

Ans. To myself, Charles G. Chever.

114 5. Ques. State in whose possession they have since been.

Ans. They have been in mine.

6. Ques. State when and where you received them.

Ans. I received them at Denver, according to the dates marked on the backs.

7. Ques. State, if you know, what paper is referred to as an enclosure in Exhibit 8.

Ans. A power of attorney, marked "Exhibit 7," from Judson H. Dudley to myself.

8. Ques. State, if you know, what person, if any, is referred to in Exhibit 8 by the word "Dave" therein.

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Ans. David H. Moffat, of Denver.

9. Ques. State, if you know, what is meant in said Exhibit 8, or to what matter or thing reference is intended by the words "but this will confirm anything you may have done."

(Objected to by defendants' solicitors as incompetent and not the best evidence.)

115 Ans. It refers to the execution of an instrument made by me under a power of attorney executed in Omaha, and which I thought, perhaps, insufficient. The instrument just referred to is marked "Exhibit 2."

10. Ques. Look at paper marked "Exhibit 1," and state whether or not it is the paper just referred too in *in* your last answer as a power of attorney.

Ans. It is.

11. Ques. Look at papers marked "Exhibits 9, 10, and 11," and state, if you know, what person, if any, is referred to by the words "Dave," and the words "Dave Moffat," and the word "Moffat," where they occur therein.

(Objected to by defendants' solicitors as incompetent and not the best evidence.)

Ans. They all refer to David H. Moffat, jr., of Denver.

12. Ques. Look at paper marked "Exhibit 2," and state, if you know, for what purpose it was executed.

(Objected to by defendants' solicitors as incompetent.)

116 Ans. To secure Mr. David H. Moffat, jr., for *for* moneys advanced to Mr. Judson H. Dudley by him.

Cross-interrogatories by defendants' solicitors:

1. Ques. Do you know, of your own knowledge, that David H. Moffat, jr., to whom you refer in your last answer, advanced money to the said Judson H. Dudley?

Ans. He told me that he had done so, at his office in Denver.

2. Ques. That, then, is the only knowledge you have that money was advanced from Moffat to Dudley?

Ans. It is.

3. Ques. Then you do not know, of your own knowledge, that the deed marked "Exhibit 2" was executed for the purpose as stated in your last answer-in-chief?

Ans. I do not.

CHARLES G. CHEVER.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the

foregoing testimony of Charles G. Chever was duly taken before me as such master, at the place and time mentioned; that the witness,
117 Charles G. Chever, before his examination, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness, Charles G. Chever, was read by me to him, and that the same was signed thereafter by the said Charles G. Chever in my presence.

JOHN R. ELVANS,
Master in Chancery.

Examination adjourned, by consent of counsel, to October 24th, A. D. 1871, at nine o'clock a. m.

JOHN R. ELVANS,
Master in Chancery.

Parties appeared this 24th day of October, A. D. 1871, pursuant to adjournment.

Solicitors for complainants now offer in evidence paper marked "Exhibit 7," and the collector's certificate and certificate of acknowledgement thereon written for the purpose of showing or tending to show a ratification by the said Dudley of the previous acts and deeds in the premises of the said Chever.

(Objected to by defendants' solicitors as incompetent, irrelevant, and not properly stamped, and proof of the signature of the collector is waived.)

Said Exhibit 7 hereto attached and made part of this report.

118 Solicitors for complainant' now offer in evidence paper marked "Exhibit 8" for the purpose last stated.

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Said Exhibit 8 hereto attached and made part of this report.

Solicitors for complainants now offer in evidence papers marked "Exhibits 9, 10, and 11."

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Said Exhibits 9, 10, and 11 are hereto attached and made part of this report.

ALEXANDER DAVIDSON, being produced and sworn on the part of the defendants, testified as follows:

1. Ques. State in what occupation you was engaged in the year' 1864 and 1865.

Ans. I was the agent of the defendants at Denver.

2. Ques. Look at this paper marked "Exhibit L," and state if you know for what consideration the same was given.

(Objected to by complainants' solicitors as irrelevant and incompetent.)

119 Ans. The consideration of the same was for goods sold and delivered by the defendants to Dudley and Ames, in September, 1864, to go to Montana.

3. Ques. State, if you know, anything as to the signature of Exhibit L.

Ans. It is Mr. Ames' signature.

4. Ques. Look at this paper marked "Exhibit M," and state what you know, if anything, in reference to the matters therein contained.

Ans. This is the bill of the goods to which I before referred, for which the note was given in part payment.

5. Ques. State, when you speak of the note, to what you refer.

Ans. I refer to the paper marked "Exhibit L."

6. Ques. State, if you know, whether said paper marked "Exhibit L" was given in part payment or in full payment of the bill of the goods.

120 Ans. It was given in full payment of the balance due on the bill of goods to which I have referred.

7. Ques. State, if you know, whether the bill of items constituting "Exhibit M" is correct or not.

Ans. It is correct.

8. Ques. State, if you know, if there is any discrepancy in amount between the papers marked "Exhibit L" and "Exhibit M."

(Objected to by complainants' solicitors, 1st as leading, 2d as secondary evidence, 3d as immaterial and incompetent.

Question withdrawn by defendants' solicitors.)

9. Ques. Look at the papers marked "Exhibit L" and "Exhibit M," and if there is any discrepancy between the two as to amount, state, if you know, how such discrepancy occurred.

(Objected to by complainants' solicitors, 1st, as leading; 2nd, as secondary evidence; 3d, as immaterial and incompetent.)

Ans. I do not know.

10. Ques. When you state in your answer to interrogatory 3d that the signature to the paper marked "Exhibit L" is Mr. Ames' signature, state what you mean thereby.

121 Ans. I mean it is Mr. Ames' handwriting. I saw him sign it.

Cross-interrogatories by complainants' solicitors:

1. Ques. What do you mean when you say you were the agent for the Tiltons?

Ans. I mean I took charge of their house here to sell their goods and attend to their business.

2. Ques. State whether or not you ever saw Exhibit M before this morning.

Ans. I think I saw it last Sunday; did not look over it.

3. Ques. State what day of the week it is now.

Ans. It is Tuesday.

4. Ques. State when you first looked over paper marked "Exhibit M."

Ans. Yesterday.

5. Ques. In what way?

122 Ans. By taking and checking it off from my day-book, my original entry.

6. Ques. Did you make any check-marks in said exhibit?

Ans. I did not.

7. Ques. State what day-book you have just referred to.

Ans. The day-book of the sales of the house of A. E. & C. E. Tilton.

8. Ques. State where and by whom said day-book was kept?

Ans. There was no particular one kept that book. I do not know where it was kept.

9. Ques. State in what particular way did you examine Exhibit M, otherwise than as stated.

Ans. I told you that before.

10. Ques. Did you examine the items in said exhibit or the figures or both?

Ans. I examined both the items and the figures, but not closely as to the figures.

123 11. Ques. Have you added or footed up the columns of figures thereon?

Ans. I have not.

12. Ques. Who was present besides yourself, if any one, at the time the bill of goods you have referred to was delivered?

Ans. Charles E. Tilton, Thomas P. Ames, & Dudley & Ames' teamsters.

13. Ques. State how you know the teamsters belonged to Dudley & Ames.

Ans. Just as I would know any train that came to the house to load goods.

14. Ques. Was Mr. Dudley present during any of the time of the delivery?

Ans. He was.

15. Ques. Are you positive of that?

Ans. I think I am.

16. Ques. With whom was the bargain made for the goods?

Ans. The bargain was made by Charles E. Tilton.

124 17. Ques. With whom was the settlement made for said goods?

Ans. With Charles E. Tilton.

18. Ques. Were you present at that time?

Ans. I was.

19. Ques. How was that settlement made?

Ans. There were three thousand dollars charged to Thomas P. Ames on account. The note marked "Exhibit L" was given for Dudley & Ames' balance—twenty-five hundred and ninety-two $\frac{80}{100}$ dollars.

20. Ques. State in what book that charge was made and by whom.

Ans. It was charged in all the books. Either Charles E. Tilton or myself made the entry in the blotter, I think.

21. Ques. Did you make the entry of said bill in any of the other books?

Ans. I did not.

22. Ques. To the best of your recollection, who made said charge in the blotter?

125 Ans. Cannot tell anything about it more than I have.

23. Ques. Was your day-book and blotter one and the same book?

Ans. It was, to my best belief.

24. Ques. Now state how you know that the paper marked "Exhibit L" was given for the balance of Dudley & Ames' account.

Ans. Because I saw him give it.

25. Ques. Whom do you mean by him?

Ans. I saw Ames sign that note marked "Exhibit L."

ALEXANDER DAVIDSON.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I, John R. Elvans, master in chancery, to whom it was referred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of Alexander Davidson was duly taken before me as such master, at the place and time mentioned. That the witness, Alexander Davidson, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the

126 said witness, Alexander Davidson, was read by me to him, and that the same was signed thereafter by the said Alexander Davidson in my presence.

JOHN R. ELVANS,
Master in Chancery.

Solicitors for defendants now offer in evidence paper marked "Exhibit L," to which solicitors for complainants object: 1st, because said paper is not stamped according to law, nor the stamps thereon cancelled according to law; 2ndly, said paper has not been proved to be the paper of Dudley & Ames; 3dly, the erasures and interlineations have not been shown to have been made before it was signed or delivered; 4thly, the same is irrelevant, immaterial, and incompetent.

(Paper marked "Exhibit L" withdrawn by defendants' solicitors.)

Defendants' solicitors now offer in evidence paper marked "Exhibit M," to which complainants' solicitors object: 1st, because it is not the best evidence of what it purports to contain; 2ndly, it is immaterial, irrelevant, and incompetent,

Exhibit M hereto attached is made part of this report.

Examination adjourned, by consent of counsel, to October 25th, A. D. 1871, at ten o'clock.

JOHN R. ELVANS,
Master in Chancery.

127 Parties appeared this 25th day of October, A. D. 1871, pursuant to adjournment.

RICHARD E. WHITSITT, being produced and sworn on the part of the complainants, testifies as follows:

1. Question. Are you one of the complainants in this suit?

Ans. Yes.

2. Ques. Look at paper marked "Exhibit 3" now shown you, and state what part, if any, of the consideration therein named was paid by yourself.

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Ans. I paid seventeen hundred dollars of this money, being one-third of the whole, for one-third interest in the property described in this deed, Mr. Steck owning an undivided one-half of my one-third of the property described in this deed, I holding the legal title for him.

(Defendants' solicitors object to that part of the above answer relating to Mr. Steck and the witness holding the legal title for him, as being more than responsive to the question.)

128 3. Quest. State whether the money you say you paid was in whole or in part furnished by any other party than yourself; if so, by whom and for what purpose?

Ans. The money was furnished by myself for the purchase of this property.

4. Ques. State whether or not any person was interested with you in your interest in said purchase; and, if so, who and how?

(Defendants' solicitors object as irrelevant and incompetent.)

Ans. Amos Steck became interested in one-half of my one-third interest, he paying me eight hundred and fifty dollars for the same.

5. Ques. Look at paper marked "Exhibit 4," now shown you, and state whether or not the sum of money you last named is the same amount referred to in said Exhibit 4.

(Objected to by defendants' solicitors as leading.)

Ans. It is.

6. Ques. Again look at paper marked "Exhibit 3" and state whether or not at the time of the purchase therein named you had any knowledge of any other account or indebtedness due the said defendants (Tiltons) from Dudley & Ames, or either of them, than what

129 appeared and was claimed by the papers then existing in an attachment-suit between said parties then pending

(Objected to by defendants' solicitors because the same could only be competent as rebutting testimony.)

Ans. I knew of none other.

Cross-interrogatories by defendants' solicitors:

1. Ques. Was it not your object in purchasing this property in connection with Cofield and Witter to pay of an attachment-lien of the defendants against Judson H. Dudley on the lots in controversy, and then acquire the legal title to the property?

(Objected to by complainants' solicitor as not proper cross-examination.)

Ans. No.

2. Ques. What induced you to purchase this property in connection with Cofield and Witter?

Ans. To make money.

3. Question. Did you not confer with Judson H. Dudley by letter or telegram, or did any one else for you, or at your solicitation or suggestion, before the purchase of this property with reference to the purchase of the same; and, if so, what was said, done, or written

130 in regard thereto?

(Objected to by complainants' solicitors, 1st, as not proper cross-examination; 2ndly, because it calls for secondary evidence and not the best evidence.)

Ans. I did not, by myself or through anybody else, by letter or telegram.

4. Ques. At the time you purchased this property had you actual notice that the defendants had an attachment lien thereon?

Ans. I cannot say that I had, only by common report.

5. Ques. Previous to the purchase of this property did you have any conversation with any one in regard thereto, with reference to purchasing the same; and, if so, with whom, and what was said?

(Objected to by complainants' solicitors as improper cross-examination.)

Ans. I had several conversations with various parties prior to the purchase of this property. The matter was generally canvassed, and left the impression on my mind that the suit of Tilton against Dudley would never amount to much, and that I was safe in purchasing the property.

131 6. Question. How did you become connected with Cofield and Witter in the purchase of this property?

Ans. I found Witter and Cofield very anxious to buy this property, as I was myself, and proposed going in with them, believing by so doing we could buy cheaper.

7. Ques. At the time of the purchase of this property did you not have an intimation from Amos Steck or from some other person of some other form of indebtedness, from Dudley & Ames, or either of them, to the defendants?

Ans. At the time of the purchase of this property I had no intimation from Amos Steck, Dudley, or Ames or anybody else of any other form of indebtedness.

8. Ques. Did you have any such intimation before or after the 23d day of May, 1867; and, if so, from whom?

(Complainants' solicitors object to so much of the question as relates to any date subsequent to the said 23d day of May, 1867.)

Ans. I had no intimation prior to the 23d day of May, 1867, or before the purchase of this property, and I cannot recollect of any intimation to that effect since.

132 9. Question. Did you ever hear Amos Steck refer to any note due from Dudley & Ames to the defendants; and, if so, when did you first hear him make such reference?

(Objected to by complainants' solicitors as not definite as to time.)

Ans. I cannot say that I ever did. I have heard Steck talk generally about this case for weeks and weeks; but as regards this note I am asked about, I cannot remember having had any conversation at any time with him about it.

10. Question. Then you intend to state that from the time of the purchase of this property to the present time you never suspected that there was any note in existence, or any instrument purporting to be a note, signed by Dudley & Ames or either of them, or purporting to be signed by Dudley & Ames or either of them, and payable to the defendants.

Ans. No, sir; I never suspected anything about it.

11. Question. And you further intend to state that from the time of the purchase of this property to the present time you never re-

133 ceived any intimation whatever that there was any note in existence, or any instrument purporting to be a note, signed by Dudley & Ames or either of them, or purporting to be signed by Dudley & Ames or either of them, and payable to the defendants?

Ans. Prior to the purchase of this property I never had, and since I believe I never have had to the present time.

RICHARD E. WHITSITT.

TERRITORY OF COLORADA,
Arapahoe County, ss:

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of Richard E. Whitsitt was duly taken before me as such master at the place and time mentioned; that the witness, Richard E. Whitsitt, before his examination, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness, Richard E. Whitsitt, was read to him by me, and that the same was signed thereafter by him, the said Richard E. Whitsitt, in my presence.

JOHN R. ELVANS,
Master in Chancery.

Examination adjourned, by consent of counsel, to October 26th, A. D. 1871, at ten o'clock a. m.

134 JOHN R. ELVANS,
Master in Chancery.

Examination of witnesses on the part of the complainants, pursuant to adjournment.

JOSEPH B. COFIELD, being produced and sworn on the part of the complainants, testifies as follows:

1. Ques. Are you one of the complainants in this case?

1. Ans. I am.

2d ques. Look at paper marked "Exhibit 3," now shown you, and state what portion, if any, of the consideration therein named was paid by yourself.

(Objected to by defendants' solicitors as leading, irrelevant, and incompetent.)

Ans. I paid one-third of the consideration named in this deed.

3. Ques. State whether at the time of the purchase named in said exhibit you had any notice of any lien or incumbrance upon any of the property therein named. If so, state what.

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Ans. I had notice of a judgment in favor of Tiltons on account for about twenty-five hundred dollars, against Judson H. Dudley.

JOSEPH B. COFIELD.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, John R. Elvans, the master in chancery to whom it was re-
135 ferred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of Joseph B. Cofield was duly taken before me as such master at the place and time mentioned; that the witness, Joseph B. Cofield, before examination, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness Joseph B. Cofield, was read by me to him, and that the same was signed thereafter by the said Joseph B. Cofield in my presence.

JOHN B. ELVANS, *M. C.*

DANIEL WITTER recalled by complainants' solicitors.

1. Ques. Are you one of the complainants in this cause?

Ans. I am.

2nd ques. State whether at the time of the purchase named in "Exhibit 3" you had any notice of any lien or incumbrance upon any of the property therein named. If so, state what.

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Ans. I knew that a portion of the property had been attached. I was informed by Amos Steck that the attachment could not be sustained.

(Answer objected to by defendants' solicitors, so far as relates to any information.)

3. Ques. Had you any actual notice concerning the matter except what you got from Steck?

(Objected to by defendants' solicitors as leading, irrelevant and incompetent.)

Ans. I had none, except that I may have talked the matter over with Whitsitt and Cofield?

136 4. Ques. Did you at that time have actual notice of the parties in the attachment suit?

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Ans. I do not recollect positively. I am under the impression that I did not know at the time who were the plaintiffs in the attachment suit.

5. Ques. What knowledge did you have, if any, at the time of said purchase of the nature of any lien or incumbrance upon any of said property except as you have before stated?

(Objected to by defendants' solicitors as irrelevant and incompetent.)

Ans. I had none whatever.

DANIEL WITTER.

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the additional testimony of Daniel Witter (he having been recalled by the

complainants' solicitors) was duly taken before me as such master in chancery at the place and time mentioned; that the witness, Daniel Witter, had read to him by me the testimony so given by him, (upon said recalling,) and that said testimony was signed by the said Daniel Witter thereafter in my presence.

JOHN R. ELVANS,
Master in Chancery.

Examination adjourned by consent of counsel to November 2d, A. D. 1871, at ten o'clock a. m.

JOHN R. ELVANS,
Master in Chancery.

Examination resumed on the part of the defendants, pursuant to adjournment.

Solicitors for defendants now offer in evidence paper marked
137 Exhibit L, to which solicitors for complainants object: 1st. Because said paper is not stamped according to law nor the stamps thereon cancelled according to law. 2ndly. Said paper has not been proved to be the paper of Dudley & Ames. 3dly. The erasures and interl'neations have not been shown to have been made before it was signed and delivered. 4thly. The same is irrelevant, immaterial, and incompetent.

Examination adjourned by consent of counsel to November 13th, 1871, at ten o'clock a. m.

JOHN R. ELVANS, *M. C.*

Examination resumed on the part of the claimants, pursuant to adjournment.

JOHN R. ELVANS, *M. C.*

Solicitors for complainants now offer affidavit marked "Exhibit 12" for the purpose of excusing the introductions of the original deeds, of which the copies hereafter offered in evidence are copies.

Affidavit marked "Exhibit 12" is hereto attached and made a part of this report.

Solicitors for complainants now offer in evidence the following copies of deed and the certificates of acknowledgments, and of record therein appearing, named in the foregoing affidavit:

First. Copy of deed from Judson & Dudley to John Alexander.
138 (Objected to by defendants' solicitors because there is no sufficient foundation laid for the introduction of the copy, in that it does not show inquiry for said deed of the grantee therein named; & 2ndly, because there is no proof that the original of said copy ever existed; 3d, because there is no proper certificate of the county clerk and recorder attached thereto.)

Said copy of deed is marked "Exhibit 13" and made a part of this report.

Secondly. Copy of deed from Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt to Joseph B. Jaeger.

(Objected to by defendants' solicitors for the same reasons as contained in former objections to introductions of paper marked "Exhibit 13," and because there is no sufficient certificate of acknowledgement of execution of the original of said copy by Joseph B. Cofield, one of the grantors.)

Said copy of deed is marked "Exhibit 14" and made a part of this report.

Thirdly. Copy of deed from Joseph B. Cofield to Daniel Witter and Richard E. Whitsitt.

(Objected to by defendants' solicitors for the same reasons as contained in former objections to introduction of paper marked "Exhibit 13.")

Said copy of deed is marked "Exhibit 15" and made a part of this report.

JUDSON H. DUDLEY recalled for complainants.

139 1. Question. Did you ever receive any of the proceeds of the sale named in paper marked "Exhibit 3," now shown you? If yea, state about what amount, and when.

Ans. I received the amount mentioned in the deed, less the amount of twenty-five hundred dollars and interest, which I owed Mr. Moffat, as explained in my former testimony. I can't now state when.

JUDSON H. DUDLEY.

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the additional testimony of Judson H. Dudley (he having been called by the complainants' solicitors) was duly taken before me as such master in chancery at the place and time mentioned; that the witness, Judson H. Dudley, had read to him by me the testimony so given by him, (upon said recalling,) and that said testimony was signed by the said Judson H. Dudley thereafter in my presence.

JOHN R. ELVANS,
Master in Chancery.

Examination adjourned by consent of counsel to November 14th, 1871, at ten o'clock a. m..

JOHN R. ELVANS, *M. C.*

140 Parties appeared this fourteenth day of November, A. D. 1871, pursuant to adjournment, and without taking testimony the examination further adjourned by consent of counsel to December 18th, proximo.

JOHN R. ELVANS, *M. C.*

Parties appeared this eighteenth day of December, A. D. 1871, pursuant to the last adjournment. Present, E. L. Smith and W. C. Kingsley, solicitors for complainants, and Charles & Elbert, solicitors for defendants; and in the absence of witnesses, by consent of counsel, examination was further adjourned to December 21st, instant.

JOHN R. ELVANS, *M. C.*

Examination further adjourned by consent and request of counsel until Friday, May 3, 1872, at ten o'clock a. m.

JOHN R. ELVANS, *M. C.*

Examination on the part of defendant, pursuant to adjournment.

JOHN R. ELVANS, *M. C.*

FRIDAY, *May 3d*, 1872.

141 JOHN Q. CHARLES, being produced and sworn on the part of the defendants, testifies as follows:

1. Question. What is your name, age, residence and occupation?

Ans. John Q. Charles; age, 50 years; residence, Denver; occupation, attorney and counselor at law.

2. Ques. State whether or not you had any connection with a certain attachment suit in the district court of the first judicial district of the Territory of Colorado, for the county of Arapahoe, in which Alfred E. Tilton and others were plaintiffs, and Judson H. Dudley and others were defendants, the same being the attachment suit mentioned in the bill of complaint; and, if so, what?

Ans. I was employed in the suit as an attorney. I came into the suit while it was pending in the supreme court of the Territory. I had nothing to do with it prior to its being carried to the supreme court, but while it was pending in the supreme court I was employed by Mr. Charles E. Tilton (one of the plaintiffs) to look after it.

3. Ques. State what you know, if anything, concerning certain amendments which were made to the pleadings in that attach-
142 ment suit which are mentioned in the bill of complaint in this cause. State fully all the particulars.

(Objected to by complainants as immaterial and incompetent.)

Ans. After the case was reversed by the supreme court and remanded for another trial to the district court of Arapahoe County, I was requested by Mr. Charles E. Tilton (one of the plaintiffs) to prepare the suit and retry the suit in the court below and prosecute it to judgment. I was directed by Mr. Tilton to call on Mr. Cavanaugh (one of the attorneys in the original case) and get the papers which had been given to him, which I did. Upon examining those papers I found that the action was founded upon a promissory note, the note being the one mentioned in the bill of complaint in this case. I also found from an examination of the original declaration that ad damnum was placed at the sum of three thousand dollars only, which sum was much too small to cover the amount of this note and the interest which had accrued upon it during the pending of the suit in the supreme court; and with a view of recovering this amount of accrued interest over and above the amount of the original ad damnum, I asked leave of the court to file an amended declaration, (complainants' solicitors object here to the witness stating contents of written instruments, and also what is matter of record,) which
143 was granted, and the amended declaration, referred to in the bill of complaint in this case was prepared and filed, for the purpose of increasing the ad damnum and enabling the plaintiffs in that suit to recover the amount of this promissory note, with the accrued interest on the same. That was the only object of the amendment. I filed an amended affidavit and bond also, so that the amended narr. should correspond with the affidavit and bond in the case. The promissory note above referred to I found had been given for an open account upon which the original suit had been instituted, and is the same note referred to in the amended declaration and in the bill of complaint in this case.

(Objection by complainants, 1st, because what it states is immaterial and incompetent; 2ndly, because purposes for which the amendments were made are immaterial.)

4. Ques. Are you acquainted with the parties complainants and defendants to this bill?

Ans. I am acquainted with Charles E. Tilton, (one of the defendants.) I know all the complainants.

Cross-interrogatories by complainants' solicitors:

1. Ques. Was it before or after the reversal by the supreme
144 court of the judgment referred to in your answer that you obtained the papers in the original case in possession of Mr. Cavanaugh?

Ans. I think it was after the case was reversed.

2. Ques. How did you ascertain by the examination of papers, of which you have spoken, that the original suit was founded upon a promissory note?

Ans. I found the note and memorandum of the original account that was attached to the declaration filed in said cause, and by comparing them with the original entries on Mr. Tilton's books subsequently I ascertained that fact.

3. Ques. How do you know that the accounts you found with the note was identical in its parts with the account filed with the original declaration?

Ans. I only know it from the comparison with Mr. Tilton's books, and from comparing it with the account filed with the original declaration.

4. Ques. Do you know that the amount of the account referred to was the same amount for which said note was given?

Ans. I cannot state that. I don't know.

J. Q. CHARLES.

145 TERRITORY OF COLORADO,
Arapahoe County, ss:

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of John Q. Charles was duly taken before me as such master at the place and time mentioned; that the witness, John Q. Charles, before his examination, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness, John Q. Charles, was read to him by me, and that the same was signed thereafter by the said John Q. Charles in my presence.

JOHN R. ELVANS, *M. in C.*

Examination adjourned by consent of counsel to May 4th, 1872, (Saturday,) at 2 p. m.

JOHN R. ELVANS, *M. in C.*

Parties appeared this 4th day of May, 1872, pursuant to adjournment Present, Messrs. Kingsley & Smith, for complainants, and Messrs. Charles & Elbert, for defendants.

Mr. DAVID H. MOFFAT, jr., being produced and sworn on the part of the complainants, testifies as follows:

1. Ques. What is your name, age, residence, and occupation?

146 Ans. David H. Moffat, jr.; age, 33 years; Denver; banker.

2. Question. Are you acquainted with the parties to this suit; and, if so, how long have you known them respect*fully*?

Ans. I have known Mr. Tilton for about eight years. I have known Cofield about seven years, and Witter and Steck for about eleven years.

3. Quest. Look at paper marked "Exhibit 2," now shown you, and state to whom, if you know, it was executed; for what consideration, at what time, and for what purpose.

(Objected to by defendant as incompetent.)

Ans. It was executed to me for the consideration of twenty-five hundred dollars, on the 9th day of March, 1867, to secure the loan of twenty-five hundred dollars by me to Judson H. Dudley, in the city of New York.

4. Ques. State, if you know, about when said money was loaned, and upon what interest, if any, and upon what time.

(Objected to by defendants as incompetent and immaterial.)

Ans. It was loaned about the 7th day of March, 1867. There
147 was no agreed rate of interest specified. There was no agreed time of payment.

5. Ques. State, if you , about when said money was paid, and in what manner.

(Objected to by defendants as incompetent and immaterial.)

Ans. It was paid on the twenty-third day of May, 1867, by Daniel Witter, Joseph Cofield, and Richard E. Whitsitt, to whom I sold the property.

6. Ques. Look at paper marked "Exhibit 3," now shown you, and state when it was made, by whom, for what consideration, and for what purpose.

(Objected to by defendants as incompetent and immaterial.)

Ans. It was made on the 23d day of May, 1867, by me, for the consideration of five thousand one hundred dollars, for the purpose of realizing the debt due me from Judson H. Dudley.

7. Ques. State, if you know, what part, if any, of said five thousand one hundred dollars was in payment of the debt for which you state Exhibit 2 was given.

(Objected to by defendants as immaterial.)

Ans. Twenty-five hundred dollars of it.

148 8. Ques. State, if you know, what became of the residue of the said five thousand one hundred dollars.

(Objected to by defendants as immaterial.)

Ans. A portion of it was paid out, as Dudley had directed, in payment of this debt. The balance was sent by me to him by draft on Philadelphia.

9. Ques. State what understanding, if any, you had at the time said Exhibit 2 was executed to you.

(Objected to by defendants as incompetent and immaterial.)

Ans. The understanding was I was to loan him this money and take title to this property, and on my return to Denver I was to sell the property and pay him what balance there might be over and above my debt.

10. Ques. State whether or not since your said sale, as shown in Exhibit 3, Judson H. Dudley has in any manner ratified said sale, and, if so, how.

(Objected to by defendants as incompetent.)

Ans. He telegraphed me ratifying the sale. He also wrote me ratifying it, and since that time I have seen him, and he has ratified it by word of mouth.

11. Ques. Do you know whether the balance that you state was remitted to him by draft was received by him? If so, state your means of information.

(Objected to by defendants as immaterial.)

149 Ans. I do. I had the draft returned paid, with his endorsement on the back of the same, and he has since told me he received the money.

Without concluding examination of David H. Moffat, jr., by request and consent of counsel, further proceedings adjourned until Monday, May 6, 1872, at 9 o'clock a. m.

JOHN R. ELVANS, *M. in C.*

No witnesses appearing for either complainant or defendants on this

(Monday) 6th day of May, 1872, examination further adjourned, by consent of counsel, until May 7th, 1872.

JOHN R. ELVANS, *M. C.*

Examination resumed, pursuant to adjournment, on the 7th day of May, 1872, at 10 a. m., but without taking testimony. Further adjournment, by consent, until May 16th, 1872.

JOHN R. ELVANS, *M. C.*

Examination resumed, pursuant to adjournment, on this sixteenth day of May, 1872, at 9 o'clock, morning.

DAVID H. MOFFAT, jr., called, in conclusion of his testimony heretofore taken and unfinished, testifies as follows for complainant:

150 1. Ques. Look at paper now shown you, marked "Exhibit 16," and state, if you know, by whom it was written, to whom, and if to you, state when received by you; and also state what sale is therein referred to.

(Objected to by defendants as immaterial and inadmissible; but objection as being out of order or being recalled waived.)

Ans. It was written by Judson H. Dudley to myself. I received it in due course of mail, about ten days from date. The subject-matter therein refers to the sale of property made by me May 23, 1867, to which I referred in my former testimony.

DAVID H. MOFFAT, JR.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of David H. Moffat, jr., was duly taken before me as such master at the place and time mentioned; that the witness, David H. Moffat, jr., before his examination, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness, David H. Moffat, jr., was read to him by me, and that the same was signed thereafter by the said David H. Moffat, jr., in my presence.

JOHN R. ELVANS, *M. in C.*

151 RICHARD E. WHITSITT recalled on the part of complainants.

1. Ques. Look at interrogatories ten (10) and eleven, (11,) and your answers thereto, as the same appear in the master's report of your testimony heretofore taken, now shown you, and state whether or not you desire to make any explanations of said answers; and, if so, what?

Ans. I meant to state and thought it was generally understood that I had no intimation except what I received at the time of recovering and signing the bill of injunction. At that time I heard the alleged note spoken of, but I had no knowledge of its existence nor any intimation of it at the time of purchasing the property in controversy from Dudley, nor for a long time afterwards.

2. Question. State to what bill of injunction you refer.

Ans. I mean the bill in this case.

3. Ques. Now look at paper marked "Exhibit 14" handed you, and state whether or not, at the time of the execution of the original thereof, the complainant Steck had any interest in the property therein named; and, if so, state what; and if you state that he had any

152 interest, then state whether or not *or not* the original of said Exhibit 14 was executed and delivered by and with the consent of said Steck.

(Objected to by defendants as incompetent and immaterial.)

Ans. I have looked at Exhibit 14, which is a copy of a deed from Witter, Cofield, and Whitsitt to John G. Jaeger, for two lots sold to him. Mr. Steck had an interest in that property at that time—an undivided one-sixth. The sale was made with his full consent.

RICHARD E. WHITSITT.

I, John R. Elvans, the master in chancery to whom it was referred to take testimony in this cause, do hereby certify to the court that the additional testimony of Richard E. Whitsitt, (he having been recalled by the complainants' solicitors,) was duly taken before as such master in chancery at the place and time mentioned; that the witness, Richard E. Whitsitt, had read to him by me the testimony so given by him upon said recalling; and that said testimony was signed by the said Richard E. Whitsitt thereafter in my presence.

JOHN R. ELVANS,
Master in Chancery.

153 ALBERT K. TILTON, being produced and sworn on the part of the defendants, testifies as follows:

1. Ques. What is your name, age, and place of residence?

Ans. Albert K. Tilton; age, thirty-one; residence, Denver.

2. Ques. Are you acquainted with the parties to this suit?

Ans. Yes.

3. Ques. State whether you sustained any business relation to the defendants, A. E. & C. E. Tilton. If so what, and for how long?

Ans. I have been their agent for the past six years, in Denver.

4. Ques. State if book marked "Exhibit N" is the book of original entries of the defendants, A. E. & C. E. Tilton?

Ans. It is the journal and transcript of the original entries or blotter.

5. Ques. State if it contains the accounts of A. E. & C. E. Tilton with Dudley & Ames, from September 15, 1864, to October 8, 1864; and, if so, upon what pages does their account appear?

Ans. It does; upon pages 370, 371, 372, 373, 374, and 388.

154 6. Question. Look at Exhibit M, and state if it is a correct statement of the account referred to of A. E. & C. E. Tilton with Dudley & Ames; and, if there are any errors in said statement, state wherein it is incorrect.

(Objected to by complainants, 1st, as leading; 2nd, as assuming a fact not proved; 3d, as incompetent and immaterial.)

Ans. On our books there was an error of ten dollars and fifty cents, (overcharge,) which was credited to Dudley & Ames at the time of the settlement of their account, Oct. 8, 1864. In making out the original bill the extensions were corrected, and at the same time the overcharge was credited, which caused a discrepancy of ten dollars and fifty cents between the book and the bill, and then on the bill the note to balance the account is not credited.

(Objected to by complainants as not responsive.)

7. Ques. Please state the items in Exhibit M which differ from the entries in the account of Dudley & Ames in Exhibit N.

(Objected to by complainants as incompetent.)

Ans. Septem. 17, one barrel Jamaica rum, at $4 per gallon, extended in the book ($172.50) one hundred and seventy-two dollars and fifty cents.

Same date, eight pairs large candlesticks, at $1.50, extended on the
155 book as ($13.00) thirteen dollars. Same date, three pairs of shirts, at $3.00, extended on the book as ($18.00) eighteen dollars.

8. Ques. State if Exhibit M is a correct transcript of the said account of Dudley & Ames from Exhibit N, with the exceptions which you mention.

Ans. It is correct, with the exception of the erorr in extension and the credit of the note.

9. Ques. State by whom and in what manner the book marked "Exhibit N" was kept.

Ans. My impression from the writing is that they were kept by John Ames. I presume the transfers from the blotter were made daily.

(Objected to by complainants as incompetent.)

Cross-interrogatories by complainants' counsel:

1. Ques. State how you know that Exhibit N is a correct transcript from the book of original entries.

Ans. I have examined and compared them both.

2. Ques. State, if you know, by whom the book of original entries was kept.

Ans. I don't know.

156 3. Ques. State who made that part of Exhibit N embracing this account.

Ans. Judging by the handwriting, I think it was John Ames. I have no doubt about it. I am acquainted with his handwriting.

4. Ques. Do you recollect now having seen in the book of original entries the errors in said account to which you have referred?

Ans. Yes.

Re-direct examination by defendants:

1st ques. State, if you know, where John Ames, of whom you speak, at present resides.

(Objected to by complainants as not redirect and immaterial.)

Ans. I think in Montana.

2d ques. State if, since your cross-examination of this morning, you have examined the book of original entries of A. E. & C. E. Tilton; and, if so, state by whom and how said book was kept.

Ans. I have. The book is kept in the handwriting of John
157 Ames, Alex. Davidson, and Charles Tilton. It was a daily record of debits and credits.

3. Question. State, if you know, in whose handwriting the said account of Dudley & Ames appears in said book of original entries.

Ans. The debits in the handwriting of John Ames, and the credits in the handwriting of Charles E. Tilton.

Re-cross examination by complainants:

1st ques. How do you know that the book to which you now refer is the book containing the original entries of the account you have previously testified concerning?

Ans. It is the record-book of our establishment for that time, and corresponds with the ledger and other books of that period.

Without concluding examination of Albert K. Tilton, by request and consent of counsel further proceedings adjourned until May 17, 1872, at 9 a. m.

JOHN R. ELVANS, *M. in C.*

Examination resumed, pursuant to adjournment, on this seventeenth day of May, 1872.

ALBERT K. TILTON, called in conclusion of his testimony here-
158 tofore taken and unfinished, testifies, as follows for defendants:
(Objection to recalling waived by complainants.)

1st question. Look at book marked "Exhibit O," and state if you know what book it was.

Ans. It is the book of original entries of A. E. & C. E. Tilton for part of the year 1864, to which I have referred in my preceding examination.

Cross-examined:

1st ques. How do you know that the book, marked "Exhibit O" is a book of original entries?

Ans. It has been in my possession six years, and corresponds with the other books—with the cash-book, journal, and ledger. It came into my possession as a book of original entry; that is all I know about it. I was not present when it was kept.

A. K. TILTON.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, John R. Elvans, the master in chancery, to whom it was referred to take testimony in this cause, do hereby certify to the court that the foregoing testimony of Albert K. Tilton was duly taken before me as such master, at the place and time mentioned; that the witness,
159 Albert K. Tilton, before his examination was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; that the testimony of the said witness, Albert K. Tilton, was read to him by me, and that the same was signed thereafter by the said Albert K Tilton in my presence.

JOHN R. ELVANS,
Master in Chancery.

ALEXANDER DAVIDSON, a witness for the defendants, recalled, testifies as follows:

1st ques. Look at book, marked "Exhibit O," and state, if you know, what book it is.

Ans. This is the book of original entries of A. E. & C. E. Tilton for part of the year 1864. The book runs from Jan'y 1st to Oct. 21st.

2 ques. State, if you know, by whom it was kept and in what manner.

Ans. It was kept by myself and John A. Ames and Charles E. Tilton. It was kept from day to day. The entries were made in it at the times the sales were made. I did most of the shipping of the goods which were sold, and always examined the book before I shipped them.

160 3 question. State what business relation you sustained to A. E. & C. E. Tilton, the defendants, during the year 1864.

Ans. I was employed by A. E. & C. E. Tilton. I had charge of their business in Denver. I refer to their mercantile business.

4th ques. Look at exhibit, marked "N," and state what book it is.

Ans. It is the journal of A. E. & C. E. Tilton for the year 1864.

3d question. State, if you know, if book marked "Exhibit N" is a correct transcript of book marked "Exhibit O."

Ans. It is.

6th question. State, if you know, in what manner book marked "Exhibit N" was kept, and by whom.

Ans. The entries were copied from book marked "Exhibit O" every day, by John Ames, then in the employ of the departments.

Cross-examined:

1st question. Did you enter in book marked "Exhibit O" the account therein of September 16th & 17th, 1864, of A. E. & C. E. Tilton against Dudley & Ames?

161 Ans. No.

2d question. At this time was either of the Tiltons at their store?

Ans. Charles E. Tilton was there.

3d quest. Had you charge of their business when Mr. Tilton was here himself?

Ans. Just as much as when he was away.

4th quest. Who sold the particular goods to Dudley & Ames?

(Objected to by defendants as not proper cross-examination and as immaterial.)

Ans. Charles E. Tilton sold the principal part of the bill; I sold some of the goods.

5th quest. How do you know that Exhibit N is what you say it is?

Ans. I know it by comparing the books any day and every day, and finding Exhibit A, a correct transcript of Exhibit O.

6th ques. Did you ever compare the accounts referred to with each other in exhibits marked "N" and "O."

162 Ans. I did.

7 ques. With whom?

Ans. By myself; also, with John Ames and Mr. Dudley.

8th ques. Where were these comparisons made, and which book did you hold?

Ans. In the store of A. E. & C. E. Tilton. I held the blotter.

Re-examined:

1 question. State, if you know, in whose handwriting the account of Dudley & Ames is entered in book marked "Exhibit O," and all you know about the entry of said account, if anything.

(Objected to by complainants because, 1st, not proper redirect; 2nd, immaterial.)

Ans. It is John Ames'. There is one entry in the writing of Charles E. Tilton under date of October 8th, 1864. He made the entry in my presence. I think I called off the goods and Ames made the entry.

ALEXANDER DAVIDSON.

I, John R. Elvans, the master in chancery, to whom it was referred to take testimony in this cause, do hereby certify to the court that the additional testimony of Alexander Davidson (he having been
163 recalled by defendants' solicitors) was duly taken before me as such master in chancery at the place and time mentioned; that the witness, Alexander Davidson, had read to him by me the testimony so given by him, (upon said recalling,) and that said testimony was signed by the said Alexander Davidson thereafter in my presence.

JOHN R. ELVANS,
Master in Chancery.

The solicitors for defendants here offer in evidence book marked "Exhibit N," at pages 370, 371, 372, 373, 374, 388, to which complainants' counsel object: 1st, because there has not been shown to be any proof of the original entry of said account in Exhibit O; 2ndly, the

book of original entry has not been established; 3dly, no foundation has been laid for putting in evidence said Exhibit N; 4thly, there has been no proof that said book has ever been settled on by parties and shown to have been correct.

(Objection that the said book N is not the book of original entries is waived by complainants' solicitors.)

Defendants now introduce book marked "Exhibit O" in evidence, to which complainants object, because there has been no proper proof that the same contains the original account referred to, and as incompetent.

164 Examination adjourned, by consent of counsel, to Saturday, June 1st, 1872, at 10 o'clock a. m.

JOHN R. ELVANS, *M. C.*

Parties appeared this first day of June, 1872, pursuant to adjournment.

DAVID H. MOFFAT, jr., recalled for complainants:

1. Ques. Look at paper marked "Exhibit 16," *error* shown you, and state, if you know, by whom it was written, to whom; and if to you, state when received by you, and also state what sale is therein referred to.

(Objected to defts.' solicitors as irrelevant and inadmissible; but objection as being out of order or witness being recalled waived.)

Ans. It was written by Judson H. Dudley to myself. I received it in due course of mail about ten days from date. The subject-matter therein refers to the sale of property made by me May 23d, 1867, to which I referred in my former testimony.

DAVID H. MOFFAT, JR.

Solicitors for complainants now offer in evidence paper marked "Exhibit 16."

(Objected to by defendants.)

I, John R. Elvans, the master in chancery to whom it was re-
165 ferred to take testimony in this cause, do hereby certify to the court that the additional testimony of David H. Moffat, jr., (he having been recalled by complainants' solicitors,) was duly taken before me as such master in chancery at the place and time mentioned; that the witness, David H. Moffat, jr., had read to him by me the testimony so given by him, (upon said recalling,) and that said testimony was signed by the said David H. Moffat, jr., thereafter, in my presence.

JOHN R. ELVANS,
Master in Chancery.

Examination adjou'ned by consent of counsel, subject to request by counsel for complainants and defendants for further hearing and proceedings, or upon notice by the master of such continuation of proceedings (under the order of the court appointing the said master to take testimony) in the said cause.

The parties complainant and defendant, in person or by solicitors, not having requested or directed the master in chancery (appointed as aforesaid) to take additional testimony, and no appearance having been made by either the complainants or defendants, or by their solicitors in the said cause since the first day of June, 1872, the master in chancery (appointed as aforesaid) did issue, publish, and deliver

166 to the said parties complainant, and did serve upon the solicitors of the said complainants and defendants, to wit, upon Messrs. Kingsley & Smith, solicitors for complainants, and upon Messrs. Charles & Elbert, solicitors for defendants, a note in writing dated September 7th, 1872, which he (the said master) delivered in person at the offices respectively of W. C. Kingsley, esq., and Charles & Elbert, in the city of Denver on the said seventh day of September, 1872, of which the following is a true copy:

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of Colorado Territory, in and for the county of Arapahoe, in chancery sitting.

JOSEPH B. COFIELD, DANIEL WITTER, R. E. Whitsitt, E. F. Halleck, et al., *vs.* A. E. TILTON, CHARLES E. TILTON, ET AL. } In reference before the master.

To the above-named complainants and defendants:

You and each of you are hereby notified and required to resume the taking of testimony in the above-entitled cause, before me at my office in the city of Denver, Colorado, on Thursday, the 12th day of September, A. D. 1872, at the hour of 10 a. m., for the purpose of en-
167 abling the undersigned to make and file his report in said cause as soon as possible and as may be, as required by law.

JOHN R. ELVANS, *M. in C.*

Dated Sept. 7th, 1872.

Pursuant to the above notice the master in chancery (appointed as aforesaid) appeared in his office on this Thursday, September 12, 1872, in the city of Denver, at 10 o'clock a. m., to hear testimony. Present Messrs. Kingsley & Smith, solicitors for complainant, and Messrs. Charles & Elbert, solicitors for defendants. No further testimony having been submitted or adduced in evidence, and in accordance with the stipulation hereto attached and made part of this report, marked "Exhibit 17 P," the testimony (by consent of counsel on behalf of complainants and defendants respectively) is hereby closed.

JOHN R. ELVANS, *M. in C.*

All of which is respectfully submitted.

JOHN R. ELVANS,
Master in Chancery.

Report.

The undersigned, one of the masters in chancery of the district court of the first judicial district of Colorado, to whom it was referred "to take proofs of the allegations of the said complainants," &c., under an order of the honorable court bearing date, and of record, Novem-
168 ber 21, 1870, begs leave to report that he has taken all the testimony in the same, Cofield & others, complainants, vs. Tilton and others, defendants, so far as presented and adduced; that in the case of each witness produced before him, as such master in chancery, and under the said order of the court, he, the said master in chancery, has had before him the witnesses hereinbefore certified; that the testimony

of each and all of the said witnesses (hereinbefore certified) was duly taken before him at the time and place hereinbefore mentioned; that the witnesses (hereinbefore mentioned) were each of them, and separately, examined, and their testimony was singly and respectively taken down by the undersigned; that they were, and each of them was, separately sworn by the undersigned to testify the truth, the whole truth, and nothing but the truth; that the testimony of each and every of the witnesses (hereinbefore mentioned) was at the time of such taking read by him, the undersigned, to him and them respectively and singly, and that the same (testimony) was by him and them (respectively) separately and singly signed thereafter by the parties hereinbefore certified to in his (the undersigned's) presence.

The master to whom the above-stated cause was referred, not understanding that under the said order of reference he was authorized to express an opinion, or to state or collocate the facts therein testified, makes no report thereupon.

169 JOHN R. ELVANS,
Master in Chancery.

DENVER, *September 12th*, 1872.

Attendance, 40.00; serv. witnesses, 2.50; testimony, 35.50; report, 5.00—$83.00. Paid by complainants.

J. R. E., *M. in C.*

EXHIBIT—JOHN R. ELVANS, *M. C.*

Know all men by these presents, That I, Judson H. Dudley, of New York City, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Charles G. Chever, of Denver, Colorado Territory, true and lawful attorney for me, and in my name, place, and stead to bargain, sell, and convey to such person or persons, and for such price or prices, and upon such terms of credit or otherwise as he, said attorney, may see fit, all or any portion of the said fol-
170 lowing-described real estate, situate in the county of Arapahoe and Territory of Colorado, to wit:

All and every the land & tenements & real estate of every description belonging to me in said county of Arapahoe.

[Rev. stamp 50 cts., J. H. D., Feb'y 2, '67.] [Rev. stamp 50 cts., J. H. D., Feb'y 2, '67.]

And in my name to make, execute, acknowledge, and deliver such deed or deeds, either with or without covenants of warranty as may be necessary, absolutely to convey to the purchaser or purchasers thereof all my right, title, interest, dower-claim, or demand whatsoever, of, in, or to the premises above mentioned or described; giving and granting unto said attorney full power and authority to do and perform every act and thing requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if per-
171 sonally present; with full power of substitution and revocation; hereby ratifying and confirming all that he, said attorney, or his substitute may lawfully do in virtue hereof.

Signed this 2nd day of February, A. D. one thousand eight hundred and sixty-seven.

JUDSON H. DUDLEY.

In presence of—
C. M. DWIGHT.

NEBRASKA TERRITORY,
County of Douglass, ss :

On this 2d day of February, A. D. 186 , before me, a notary public in and for said county, personally came the above-named Judson H. Dudley, who is personally known to me to be the identical person whose name is affixed to the foregoing power of attorney as grantor, and he acknowledged the instrument to be his voluntary act and deed for the purposes therein mentioned.

{ NOTARIAL SEAL, DOUGLAS COUNTY, NEBRASKA. } Witness my hand and notarial seal the date aforesaid.

DAN. GANTT, *Notary Public.*

172 STATE OF NEBRASKA,
County of Douglas, ss :

I, George Armstrong, clerk of the district court in and for said county, do hereby certify that the annexed instrument is executed and proved or acknowledged in due form, according to the laws of the State Nebraska, to entitle it to be recorded therein; also, that Daniel Gantt, before whom the same was proved and acknowledged, was, at the time of taking such proof or acknowledgment, a notary public in and for said county, duly qualified and authorized to take the same; and I further certify that I am well acquainted with the handwriting of the said Daniel Gantt, and verily believe the signature to the said certificate is genuine.

{ FIRST DISTRICT COURT OF NEBRASKA. SEAL. } Witness my hand and the seal of said court at Omaha this fourth day of May, A. D. 1867.

GEORGE ARMSTRONG, *Clerk.*

(Indorsed :) Letter of attorney. From Judson H. Dudley to Charles G. Chever.

Received for record the 21st day of May, A. D. 1867, at 9 o'clock a. m., and recorded in book 10 of deeds, page 291.

$2.00. CHARLES G. CHEVER,
County Clerk Colo. Territory, Arapahoe County.

173 EXHIBIT 2.—JOHN R. ELVANS, *M. C.*

This deed, made this ninth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, between Judson H. Dudley, by his attorney in fact, Charles G. Chever, of Denver City, of the county of Arapahoe and Territory of Colorado, of the first part, and David H. Moffat, jr., of same place, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth : That the said party of the first part, for and in consideration of the sum of twenty-five hundred ($2,500.00) dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, all the right, title, interest, claim, and demand which the said party of the first part hath in and to the following-described lots or parcels of land, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit :

Lots numbered twenty-seven and twenty-eight,(27 & 28,) in block
174 numbered one hundred and fifty-nine, (159;) lots Nos. (5 & 6,)
five and six, in block numbered one hundred and thirty-seven, (137;) lots numbered seven and eight, (7 & 8,) in block number six, (6;) lot number thirty-one, (31,) in block number one hundred and twenty-seven, (127;) lots numbered twenty-five and twenty-six, (25 & 26,) in block number two hundred and nine, (209;) lots numbered five and six, (5 & 6,) in block number ninety-four, (94;) lots numbered eleven and twelve, (11 & 12,) in block number seventy-eight, (78;) lots numbered twenty-nine and thirty, (29 & 30,) in block number seventy-eight, (78;) fractional lots numbered fifteen and sixteen, (15 & 16,) in block numbered sixty-two, (62;) lots numbered thirteen and fourteen, (13 & 14,) block numbered one hundred and twenty-nine, (129;) lots twenty-five and twenty-six, in block number two hundred and nine, (209;) lots numbered eleven and twelve, (11 & 12,) in block number one hundred and ninety-four, (194;) lots numbered twenty-one and twenty-two, (21 & 22,) in block numbered one hundred and seventy-five, (175;) lots two, three, four, five, & six, (2, 3, 4, 5, & 6,) in block number one hundred and eighty-eight, (188;) lots numbered twenty-seven and twenty-eight and twenty-nine, (27, 28, & 29,) in block numbered two hundred and seventeen, (217;) lots numbered six, nineteen, and twenty, (6, 19, & 20,) in block number two hundred and ninety-seven, (297;) lots numbered
eight, nine, ten, eleven, and twelve, (8, 9, 10, 11, & 12,) in block
175 number three hundred and eighteen, (318;) lots numbered twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, (24, 25, 26, 27, & 28,) in block number three hundred and twenty-one, (321;) all of lots seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen, (7, 8, 9, 10, 11, 12, 13, 14, 15, & 16,) in block number one hundred and eighty-eight, (188;) lots numbered seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, (17, 18, 19, 20, 22, 23, 24, 25, & 26,) in block number two hundred and seventeen, (217;) lots numbered seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four twenty-five, twenty-six, twenty-seven, and twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, & 32,) in block number two hundred and twenty-four, (224;) lot number twenty-four, (24,) in block number two hundred and twenty-five, (225;) lot number twenty-four, (24,) in block number two hundred and twenty-six, (226;) lot number eight, (8,) in block number two hundred and fifty, (250;) lots number eleven, (11,) in block number two hundred and sixty, (260;) lots numbered seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32,) in block number two hundred and sixty-one, (261;) lot number twenty-two, (22,) in block
number two hundred and sixty-two, (262;) lots numbered thirty-one
176 and thirty-two, (31 & 32,) in block number two hundred and sixty-three, (263;) lots numbered nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, (19, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, & 32,) in block number two hundred and eight four, (284;) lot number nineteen, (19,) in block number two hundred and eighty-six, (286;) lot number twenty-one, (21,) in block number two hundred and ninety-eight, (298;) lots number seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18,

20, 21, 22, 23, 23, 25, 26, 27, 28, 29, 30, 31, 32,) in block number three hundred, (300;) lots numbered one, two, three, four, five, six, & seven, (1, 2, 3, 4, 5, 6, & 7,) in block number three hundred and eighteen, (318;) lots numbered seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, & twenty-three, (17, 18, 19, 20, 21, 22, & 23,) in block number three hundred and twenty-one, (321;) lots numbered five and six, (5 & 6,) in block number three hundred and thirty-five, (335;) lots numbered five and six, (5 & 6,) in block number three hundred and thirty-six, (336;) lots numbered thirty-one & thirty-two, (31 & 32,) in block number one hundred and eight, (108;) lots numbered thirteen and fourteen, (13
177 & 14,) block number one hundred and seventy-eight, (178;) lots numbered seven and eight, (7 & 8,) in block number two hundred and fifty-one, (251;) lots numbered twenty-three and twenty-four, (23 & 24,) in block number one hundred and forty-four, (144;) lots numbered nine and ten, (9 & 10,) in block number two hundred and sixty, (260;) lots numbered three and four, (3 & 4,) in block three hundred and thirty-five, (335;) lots seventeen and eighteen, (17 & 18,) in block number two hundred and sixty-two, (262;) lots number seventeen and eighteen, (17 & 18,) in block number one hundred and *and* fifty-six, (156;) fractional lots numbered twenty-nine and thirty, (29 & 30,) in block number two hundred and sixty, (260;) lots numbered nine and ten, (9 & 10,) in block number two hundred and eighty-three, (283;) lots numbered twenty-one and twenty-two, (21 & 22,) in block number two hundred and twenty-six, (226;) lots numbered seven and eight, (7 & 8,) in block number one hundred and fifty-eight, (158;) lot number eighteen, (18,) in block number two hundred and twenty-six, (226;) lot number eighteen, (18,) in block number one hundred and ninety-one, (191,) situate in Denver City, east division, as per survey of E. D. Boyd. Also, lots numbered seven and eight, (7 & 8,) in block numbered (63) sixty-three; lot number four, (4,) in block number forty-one, (41;) lots numbered one, two, three, four, five, and six, (1, 2, 3, 4, 5, & 6,) in block number seventy-one, (71,) situate in Denver City, west division, as per survey of F. J. Ebert, for-
178 merly known as Moody's survey: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever, and the said party of the first part, the aforesaid lots or parcels of land unto the said party of the second part, his heirs and assigns, against the claim or claims of all and every person whatsoever, doth and will warrant and forever defend by these presents.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JUDSON H. DUDLEY. [SEAL.]
By his attorney in fact CHARLES G. CHEVER. [SEAL.]

Signed sealed and delivered in presence of—
ALFRED SAYRE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alfred Sayre, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Judson H. Dudley, by his attorney in

fact, Charles G. Chever, personally known to me as the person
179 whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as *his* free and voluntary act of the said Judson H. Dudley for the uses and purposes therein set forth.

{ ALFRED SAYRE, NOTARY PUBLIC, ARAPAHOE COUNTY, COLORADO. } Given under my hand and notarial seal this eleventh day of May, A. D. 1867.

ALFRED SAYRE,
Notary Public.

(Endorsed:) 6513. Warranty deed. Judson H. Dudley, by atty., to David H. Moffat. Filed for record May 18th, A. D. 1867, at 2 o'clock p. m. Recorded in book 15, page 88. Charles G. Chever, clk. & recorder, Arapahoe Co., Colo. Ter'ry.

EXHIBIT 3—JOHN R. ELVANS, *M. C.*

This deed made this twenty-third day of May in the year of our Lord one thousand eight hundred and sixty-seven between David H.
180 Moffat, jr., of the county of Arapahoe and Territory of Colorado, of the first part, and Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt, of the county of Arapahoe and Territory of Colorado, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five thousand one hundred dollars ($5,100.00) to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, convey, and confirm unto the said parties of the second part, their heirs and assigns, forever, all the following-described lots in Denver, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit: Lots No. seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, (17, 18, 19, 20, 22, 23, 24, 25, & 26,) in block No. two hundred and seventeen, (217;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and twenty-four, (224;) lot No. twenty-four, (24,) in block No. two hundred and twenty-
181 five, (225;) lot No. twenty-four, (24,) in block No. two hundred and twenty-six, (226;) lot No. eight, (8,) in block No. two hundred and fifty, (250;) lot No. eleven, (11,) in block two hundred and sixty, (260;) lots seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and sixty-one, (261;) lot No. twenty-two, (22,) in block No. two hundred and sixty-two, (262;) lots No. thirty-one and thirty-two, (31 and 32,) in block No. two hundred and sixty-three, (263;) lots No. nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (19, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32,) in block No. (284) two hundred and eighty-four; lot No. nineteen, (19,) in block No. two hundred and eighty-six, (286;) lot No. twenty-one, (21,) in block No. two hundred and ninety-eight, (298;) lots No. seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three,

20, 21, 22, 23, 23, 25, 26, 27, 28, 29, 30, 31, 32,) in block number three hundred, (300;) lots numbered one, two, three, four, five, six, & seven, (1, 2, 3, 4, 5, 6, & 7,) in block number three hundred and eighteen, (318;) lots numbered seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, & twenty-three, (17, 18, 19, 20, 21, 22, & 23,) in block number three hundred and twenty-one, (321;) lots numbered five and six, (5 & 6,) in block number three hundred and thirty-five, (335;) lots numbered five and six, (5 & 6,) in block number three hundred and thirty-six, (336;) lots numbered thirty-one & thirty-two, (31 & 32,) in block number one hundred and eight, (108;) lots numbered thirteen and fourteen, (13
177 & 14,) block number one hundred and seventy-eight, (178;) lots numbered seven and eight, (7 & 8,) in block number two hundred and fifty-one, (251;) lots numbered twenty-three and twenty-four, (23 & 24,) in block number one hundred and forty-four, (144;) lots numbered nine and ten, (9 & 10,) in block number two hundred and sixty, (260;) lots numbered three and four, (3 & 4,) in block three hundred and thirty-five, (335;) lots seventeen and eighteen, (17 & 18,) in block number two hundred and sixty-two, (262;) lots number seventeen and eighteen, (17 & 18,) in block number one hundred and *and* fifty-six, (156;) fractional lots numbered twenty-nine and thirty, (29 & 30,) in block number two hundred and sixty, (260;) lots numbered nine and ten, (9 & 10,) in block number two hundred and eighty-three, (283;) lots numbered twenty-one and twenty-two, (21 & 22,) in block number two hundred and twenty-six, (226;) lots numbered seven and eight, (7 & 8,) in block number one hundred and fifty-eight, (158;) lot number eighteen, (18,) in block number two hundred and twenty-six, (226;) lot number eighteen, (18,) in block number one hundred and ninety-one, (191,) situate in Denver City, east division, as per survey of E. D. Boyd. Also, lots numbered seven and eight, (7 & 8,) in block numbered (63) sixty-three; lot number four, (4,) in block number forty-one, (41;) lots numbered one, two, three, four, five, and six, (1, 2, 3, 4, 5, & 6,) in block number seventy-one, (71,) situate in Denver City, west division, as per survey of F. J. Ebert, for-
178 merly known as Moody's survey: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever, and the said party of the first part, the aforesaid lots or parcels of land unto the said party of the second part, his heirs and assigns, against the claim or claims of all and every person whatsoever, doth and will warrant and forever defend by these presents.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JUDSON H. DUDLEY. [SEAL.]
By his attorney in fact CHARLES G. CHEVER. [SEAL.]

Signed sealed and delivered in presence of—
ALFRED SAYRE.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alfred Sayre, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Judson H. Dudley, by his attorney in

fact, Charles G. Chever, personally known to me as the person
179 whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as *his* free and voluntary act of the said Judson H. Dudley for the uses and purposes therein set forth.

ALFRED SAYRE, NOTARY PUBLIC, ARAPAHOE COUNTY, COLORADO. Given under my hand and notarial seal this eleventh day of May, A. D. 1867.

ALFRED SAYRE,
Notary Public.

(Endorsed:) 6513. Warranty deed. Judson H. Dudley, by atty., to David H. Moffat. Filed for record May 18th, A. D. 1867, at 2 o'clock p. m. Recorded in book 15, page 88. Charles G. Chever, clk. & recorder, Arapahoe Co., Colo. Ter'ry.

EXHIBIT 3—JOHN R. ELVANS, *M. C.*

This deed made this twenty-third day of May in the year of our Lord one thousand eight hundred and sixty-seven between David H.
180 Moffat, jr., of the county of Arapahoe and Territory of Colorado, of the first part, and Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt, of the county of Arapahoe and Territory of Colorado, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five thousand one hundred dollars ($5,100.00) to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, convey, and confirm unto the said parties of the second part, their heirs and assigns, forever, all the following-described lots in Denver, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit: Lots No. seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, (17, 18, 19, 20, 22, 23, 24, 25, & 26,) in block No. two hundred and seventeen, (217;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and twenty-four, (224;) lot No. twenty-four, (24,) in block No. two hundred and twenty-five, (225;) lot No. twenty-four, (24,) in block No. two hundred and
181 twenty-six, (226;) lot No. eight, (8,) in block No. two hundred and fifty, (250;) lot No. eleven, (11,) in block two hundred and sixty, (260;) lots seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and sixty-one, (261;) lot No. twenty-two, (22,) in block No. two hundred and sixty-two, (262;) lots No. thirty-one and thirty-two, (31 and 32,) in block No. two hundred and sixty-three, (263;) lots No. nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (19, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, and 32,) in block No. (284) two hundred and eighty-four; lot No. nineteen, (19,) in block No. two hundred and eighty-six, (286;) lot No. twenty-one, (21,) in block No. two hundred and ninety-eight, (298;) lots No. seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three,

twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, and 32,) in block No. three hundred, (300;) lots No. one, two, three, four, five, six, and seven, (1, 2, 3, 4, 5, 6, and 7,) in block No. three hundred and eighteen, (318;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three, (17, 18, 19, 20, 21, 22, and 23.)
182 in block No. three hundred and twenty-one, (321;) lots No. five and six, (5 & 6,) in block No. three hundred and thirty-five, (335;) lots No. five and six, (5 and 6,) in block No. three hundred and thirty-six, (336;) lots No. thirteen and fourteen, (13 and 14,) in block No. one hundred seventy-eight, (178;) lots No. seven and eight, (7 and 8,) in block No. two hundred and fifty-one, (251;) lots No. twenty-three and twenty-four, (23 and 24,) in block No. one hundred and forty-four, (144;) lots No. nine and ten, (9 and 10,) in block No. two hundred and sixty, (260;) lots No. three and four, (3 and 4,) in block No. three hundred and thirty-five, (335;) lots No. seventeen and eighteen, (17 and 18,) in block No. two hundred and sixty-two, (262;) lots No. seventeen and eighteen, in block No. one hundred and fifty-six, (156;) lots No. twenty-seven and twenty-eight, (27 and 28,) in block No. one hundred and fifty-nine, (159;) lots seven and eight, (7 and 8,) in block No. six, (6;) lot No. thirty-one, (31,) in block No. one hundred and twenty-seven, (127;) lots No. twenty-five and twenty-six, (25 and 26,) in block No. two hundred and nine; lots No. five and six, (5 & 6,) in block No. ninety-four, (94;) lots No. eleven and twelve, and twenty-nine and thirty, (11, 12, 29, and 30,) in block No. seventy-eight, (78;) lots No. thirty-one and thirty-two, (31 and 32,) in block No. one hun-
183 dred and eight, (108;) lots No. twenty-seven and twenty-eight, (27 & 28,) in block No. one hundred and thirty-seven, (137;) lots No. fifteen and sixteen, (15 and 16.) in block No. one hundred and seventy-two, (172;) lots No. one and two, (1 and 2,) in block No. one hundred and sixty-five, (165;) fractional lots fifteen and sixteen, (15 and 16,) in block sixty-two, (62;) lots No. thirteen and fourteen, (13 and 14,) in block No. one hundred and twenty-nine, (129;) lots No. eleven and twelve, (11 and 12,) in block No. one hundred and ninety-four, (194;) and lots No. twenty-one and twenty-two, (21 and 22,) in block No. one hundred and seventy-five, (175;) also, fractional lots Nos. twenty-seven, twenty-eight, and twenty-nine, in block No. two hundred and seventeen, (217;) six, nineteen, and twenty, (6, 19, and 20,) in block No. two hundred and ninety-seven, (297;) eight, nine, ten, eleven, and twelve, (8, 9, 10, 11, and 12,) in block No. three hundred and eighteen, (318;) twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, (24, 25, 26, 27, and 28,) in block No. three hundred and twenty-one, (321;) twenty-nine and thirty, in block No. two hundred and sixty, (260;) nine and ten, in block No. two hundred and eighty-three, (283;) twenty-one and twenty-two, (21 and 22,) in block No. two hundred and twenty-six, (226;) seven and eight, in block one hundred and fifty-eight, (158;) eighteen, (18,)
184 in block No. two hundred and twenty-six, (226;) and eighteen, (18,) in block No. one hundred and ninety-one, (191;) all in Denver City, east division, according to the survey of F. J. Ebert, city surveyor; also, lots No. seven and eight, (7 & 8,) in block No. sixty-three, (63;) lot No. four, in block No (41) forty-one; and lots No. one, two, three, four, five, and six, (1, 2, 3, 4, 5, and 6,) in block No. seventy-one, (71;) in Denver City, west division, according to the said survey of F. J. Ebert, city surveyor: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim, whatsoever, of the said party of the first part, either in law or

equity, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns, forever. And the said party of the first part, the aforesaid David H. Moffat, jr., unto the said parties of the second part, their heirs and assigns, against the claim or claims of all and every person whatsoever claiming or to claim the same by, through, or under the party of the first part, doth and will warrant and forever defend by these presents.

In witness whereof the said party of the first hath hereunto
185 set his hand and seal the day and year first above written.

DAVID H. MOFFAT, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
ALFRED SAYRE,
GEO. W. WELLS.

[Rev. stamp. D. H. Moffat, jr. May 23d, 1867.]
[Rev. stamp. D. H. Moffat, jr. May 23d, 1867.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alfred Sayre, a notary public in and for said county and Territory aforesaid, do hereby certify that David H. Moffat, jr., personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

ALFRED SAYRE, NOTARY PUBLIC, ARAPAHOE COUNTY, COLORADO. [SEAL.]

Given under my hand and notarial seal this 23d day of May, A. D. 1867.

ALFRED SAYRE,
Notary Public.

186 CITY ABSTRACT OFFICE, DENVER, COLORADO, WITTER & CLEMENTS. [SEAL.]

(Endorsed:) John R. Elvans. 6537. David H. Moffat to Danl. Witter et al.

Filed for record May 23d, A. D. 1867, at 2 o'clock p. m. Recorded in book 13, page 110.

CHAS. G. CHEVER,
Clk. & Recorder, Arapahoe Co., Colo. Ter'y.

EXHIBIT 4.—JOHN R. ELVANS, *M. C.*

This deed, made this 24th day of July, in the year of our Lord one thousand eight hundred and sixty-eight, between Richard E. Whitsitt, of the county of Arapahoe and Territory of Colorado, of the first part, and Amos Steck, of the county of Arapahoe and Territory of Colorado, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of eight hundred and fifty dollars ($850.00) to the said party of the first part paid in hand, paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quitclaimed,
187 and by these presents doth remise, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said

party of the first part has in and to the following-described lots or parcels of land, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit:

The undivided one sixth (1/6) of all the following lots: Number seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, (17, 18, 19, 20, 22, 23, 24, 25, and 26,) in block No. two hundred and seventeen, (217;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and twenty-four, (224;) lot No. twenty-four, (24,) in block No. two hundred and twenty-five, (225;) lot No. twenty-four, (24,) in block No. two hundred and twenty-six, (226;) lot No. eight, (8,) in bl'k No. two hundred and fifty, (250;) lot No. eleven (11,) in block No. two hundred and sixty, (260;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, , 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, & 32,) in block
188 No. two hundred and sixty-one, (261;) lot No. twenty-two, (22,) in block No. two hundred and sixty-two, (262;) lots No. thirty-one and thirty-two, (32;) in block No. two hundred and sixty-three, (263;) lots No. nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, in block No. two hundred and eighty-four, (284;) lot nineteen, (19,) in block No. two hundred and eighty-six, (286;) lots No. twenty-one, (21,) in block No. two hundred and ninety-eight, (298;) lots No. seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, & 32,) in block No. three hundred, (300;) lots No. one, two, three, four, five, six, and seven, (1, 2, 3, 4, 5, 6, & 7,) in block No. three hundred and eighteen, (318;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three, (17, 18, 19, 20, 21, 22, & 23,) in block No. three hundred and twenty-one, (321;) lots five and six, (5 & 6,) in block No. three hundred and thirty-five, (335;) lots No. five and six, (5 & 6,) in block three hundred and thirty-six, (336;) lots No. thirteen and fourteen, (13 & 16,) in block No. one hundred and seventy-eight, (178;) lots No. seven and eight, (7 & 8,) in block No. two hundred and fifty-one, (251;) lots No. twenty-three and twenty-four, (23 & 24,) in block
189 No. one hundred and forty-four, (144;) lots No. nine and ten, (9 & 10,) in block No. two hundred and sixty, (260;) lots No. three and four, (3 & 4,) in block No. three hundred and thirty-five, (335;) lots No. seventeen and eighteen, (17 & 18,) in block No. two hundred and sixty-two, (262;) lots No. seventeen and eighteen, (17 & 18,) in block No. one hundred and fifty-six, (156;) lots No. twenty-seven and twenty-eight, (27 & 28,) in block No. one hundred and fifty-nine, (159;) lots No. seven and eight, (7 & 8,) in block No. six, (6;) lot No. thirty-one, (31,) in block No. one hundred and twenty-seven, (127;) lots twenty-five and twenty-six, (25 & 26,) in block No. two hundred and nine, (209;) lots No. five and six, (5 & 6,) in block No. ninety-four, (94;) lots twenty-nine and thirty, (29 & 30,) in block No. seventy-eight, (78;) lots No. twenty-seven and twenty-eight, (27 & 28,) in block No. one hundred and thirty-seven, (137;) lots No. fifteen and sixteen, (15 & 16,) in block No. one hundred and seventy-two, (172;) lots one and two, (1 & 2,) in block No. one hundred and sixty-five, (165;) lots No. eleven and twelve, (11 & 12,) in block No. one hundred

and ninety-four, (194;) lots twenty-one and twenty-two, (21 & 22,) in block No. one hundred and seventy-five, (175;) fractional lots No. twenty-seven, twenty-eight, and twenty-nine, (27, 28, and 29,) in block No. two hundred and seventeen, (217;) lots No. six, nineteen, and twenty, (6, 19, & 20,) in block No. two hundred and
190 ninety-seven, (297;) lots No. eight, nine, ten, eleven, and twelve (8, 9, 10, 11, & 12,) in block No. three hundred and eighteen, (318;) lots No. twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, (24, 25, 26, 27, & 28,) in block No. three hundred and twenty-one, (321;) lots No. twenty-nine and thirty, (29 & 30,) in block No. two hundred and sixty, (260;) lots No. nine and ten, (9 & 10,) in block No. two hundred and eighty-three, (283;) lots No. twenty-one and twenty-two, (21 & 22,) in block No. two hundred and twenty-six, (226;) x lots No. seven and eight, (7 & 8,) in block No. one hundred and fifty-eight, (158;) lot No. eighteen, (18,) in block No. two hundred and twenty-six, (226;) lot No. eighteen, (18,) in block No. one hundred and ninety-one, (191;) also, the undivided one-fourth (¼) of lots No. eleven and twelve, (11 & 12,) in block No. seventy-eight, (78;) and lots Nos. thirteen and fourteen, (13 & 14,) in block No. one hundred and twenty-nine, (129,) all in the east division of the city of Denver, as per survey of F. J. Ebert, formerly Boyd's survey; also, the undivided sixth (6th) part of lots No. seven and eight, (7 & 8,) in block No. sixty-three, (63;) lot No. four, (4,) in block No. forty-one, (41;) lots No. one, two, three, four, five, and six, (1, 2, 3, 4, 5, & 6,) in block No. seventy-one, situate in the west di-
191 vision of the city of Denver, as per survey of F. J. Ebert:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and, claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written.

RICHARD E. WHITSITT. [SEAL.]

Signed, sealed and delivered in presence of—(the words "undivided one-6th' part of,' on last page above, interlined before signing)—
J. BRIGHT SMITH.

[Rev. stamp. R. E. Whitsitt. June 24th, 1868.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, William T. McLaughlin, a notary public in and for said county, in the Territory of aforesaid, do hereby certify that Richard E. Whitsitt, personally known to me as the person whose name is subscribed
192 to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-fourth day of July, A. D. 1868.

WM. T. McLAUGHLIN,
Notary Public.

WM. T. M'LAUGHLIN, NOTARY PUBLIC, ARAPAHOE COUNTY, COLORADO. SEAL.

(Indorsed:) 4170. R. E. Whitsitt to Amos Steck.

party of the first part has in and to the following-described lots or parcels of land, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit:

The undivided one sixth ($\frac{1}{6}$) of all the following lots: Number seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, and twenty-six, (17, 18, 19, 20, 22, 23, 24, 25, and 26,) in block No. two hundred and seventeen, (217;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32,) in block No. two hundred and twenty-four, (224;) lot No. twenty-four, (24,) in block No. two hundred and twenty-five, (225;) lot No. twenty-four, (24,) in block No. two hundred and twenty-six, (226;) lot No. eight, (8,) in bl'k No. two hundred and fifty, (250;) lot No. eleven (11,) in block No. two hundred and sixty, (260;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 19, , 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, & 32,) in block
188 No. two hundred and sixty-one, (261;) lot No. twenty-two, (22,) in block No. two hundred and sixty-two, (262;) lots No. thirty-one and thirty-two, (32;) in block No. two hundred and sixty-three, (263;) lots No. nineteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, in block No. two hundred and eighty-four, (284;) lot nineteen, (19,) in block No. two hundred and eighty-six, (286;) lots No. twenty-one, (21,) in block No. two hundred and ninety-eight, (298;) lots No. seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, (17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, & 32,) in block No. three hundred, (300;) lots No. one, two, three, four, five, six, and seven, (1, 2, 3, 4, 5, 6, & 7,) in block No. three hundred and eighteen, (318;) lots No. seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three, (17, 18, 19, 20, 21, 22, & 23,) in block No. three hundred and twenty-one, (321;) lots five and six, (5 & 6,) in block No. three hundred and thirty-five, (335;) lots No. five and six, (5 & 6,) in block three hundred and thirty-six, (336;) lots No. thirteen and fourteen, (13 & 16,) in block No. one hundred and seventy-eight, (178;) lots No. seven and eight, (7 & 8,) in block No. two hundred and fifty-one, (251;) lots No. twenty-three and twenty-four, (23 & 24,) in block
189 No. one hundred and forty-four, (144;) lots No. nine and ten, (9 & 10,) in block No. two hundred and sixty, (260;) lots No. three and four, (3 & 4,) in block No. three hundred and thirty-five, (335;) lots No. seventeen and eighteen, (17 & 18,) in block No. two hundred and sixty-two, (262;) lots No. seventeen and eighteen, (17 & 18,) in block No. one hundred and fifty-six, (156;) lots No. twenty-seven and twenty-eight, (27 & 28,) in block No. one hundred and fifty-nine, (159;) lots No. seven and eight, (7 & 8,) in block No. six, (6;) lot No. thirty-one, (31,) in block No. one hundred and twenty-seven, (127;) lots twenty-five and twenty-six, (25 & 26,) in block No. two hundred and nine, (209;) lots No. five and six, (5 & 6,) in block No. ninety-four, (94;) lots twenty-nine and thirty, (29 & 30,) in block No. seventy-eight, (78;) lots No. twenty-seven and twenty-eight, (27 & 28,) in block No. one hundred and thirty-seven, (137;) lots No. fifteen and sixteen, (15 & 16,) in block No. one hundred and seventy-two, (172;) lots one and two, (1 & 2,) in block No. one hundred and sixty-five, (165;) lots No. eleven and twelve, (11 & 12,) in block No. one hundred

and ninety-four, (194;) lots twenty-one and twenty-two, (21 & 22,) in block No. one hundred and seventy-five, (175;) fractional lots No. twenty-seven, twenty-eight, and twenty-nine, (27, 28, and 29,) in block No. two hundred and seventeen, (217;) lots No. six, nineteen, and twenty, (6, 19, & 20,) in block No. two hundred and
190 ninety-seven, (297;) lots No. eight, nine, ten, eleven, and twelve (8, 9, 10, 11, & 12,) in block No. three hundred and eighteen, (318;) lots No. twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, (24, 25, 26, 27, & 28,) in block No. three hundred and twenty-one, (321;) lots No. twenty-nine and thirty, (29 & 30,) in block No. two hundred and sixty, (260;) lots No. nine and ten, (9 & 10,) in block No. two hundred and eighty-three, (283;) lots No. twenty-one and twenty-two, (21 & 22,) in block No. two hundred and twenty-six, (226;) x lots No. seven and eight, (7 & 8,) in block No. one hundred and fifty-eight, (158;) lot No. eighteen, (18,) in block No. two hundred and twenty-six, (226;) lot No. eighteen, (18,) in block No. one hundred and ninety-one, (191;) also, the undivided one-fourth (¼) of lots No. eleven and twelve, (11 & 12,) in block No. seventy-eight, (78;) and lots Nos. thirteen and fourteen, (13 & 14,) in block No. one hundred and twenty-nine, (129,) all in the east division of the city of Denver, as per survey of F. J. Ebert, formerly Boyd's survey; also, the undivided sixth (6th) part of lots No. seven and eight, (7 & 8,) in block No. sixty-three, (63;) lot No. four, (4,) in block No. forty-one, (41;) lots No. one, two, three, four, five, and six,
191 (1, 2, 3, 4, 5, & 6,) in block No. seventy-one, situate in the west division of the city of Denver, as per survey of F. J. Ebert:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and, claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written.

RICHARD E. WHITSITT. [SEAL.]

Signed, sealed and delivered in presence of—(the words "undivided one-6th' part of,' on last page above, interlined before signing)—
J. BRIGHT SMITH.

[Rev. stamp. R. E. Whitsitt. June 24th, 1868.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, William T. McLaughlin, a notary public in and for said county, in the Territory of aforesaid, do hereby certify that Richard E. Whitsitt,
192 personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

WM. T. M'LAUGHLIN, NOTARY PUBLIC, ARAPAHOE COUNTY, COLORADO. SEAL.

Given under my hand and notarial seal this twenty-fourth day of July, A. D. 1868.

WM. T. McLAUGHLIN,
Notary Public.

(Indorsed:) 4170. R. E. Whitsitt to Amos Steck.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I hereby certify that the within instrument was filed for record in my office this 22nd day of April, A. D. 1870, at 11¼ o'clock a. m., and is duly recorded in book 25, on page 419, 420, 421, 422.

WEBSTER D. ANTHONY, *Recorder.*

Fees, $5.50.

EXHIBIT 5.—JOHN R. ELVANS, *M. C.*

This deed, made this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-eight, between John Alexander, of the county of Arapahoe and Territory of Colorado, of the first part, and Erastus F. Halleck and Charles Halleck, of the county of Arapahoe and Territory of Colorado, of the second part, witnesseth:

That the said party of the first part, for and in consideration of
193 the sum of four thousand dollars to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm, unto the said parties of the second part, their heirs and assigns, forever, all the following-described lots or parcels of land, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit, lots four, (4,) five, (5,) & six, (6,) in block one hundred and thirty-seven, (137,) East Denver, said county and Territory, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances: To have and to hold the said premises above bargained and described, with the appurtenances, unto the said parties of the second part, their heirs and assigns, forever. And the said John Alexander, party of the first , for his heirs, executors, and administrators, does covenant,
194 grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the ensealing and delivery of these presents he was well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in law in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of whatever kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming, or to claim, the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year above written.

JOHN ALEXANDER. [SEAL.]

Signed, sealed, and delivered in presence of—

[Rev. stamp. March 30, 1868. J. A.]

195 TERRITORY OF COLORADO,
County of Arapahoe, ss :

I, Alfred Sayre, a notary public in and for said county, in the Territory aforesaid, do hereby certify that John Alexander, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

SEAL. ALFRED SAYRE NOTARY PUBLIC, ARAPAHOE COUNTY, COLORADO. Given under my hand and notarial seal this thirteenth day of March, A. D. 1868.

ALFRED SAYRE,
Notary Public.

(Indorsed:) 989. Warranty deed. John Alexander to Erastus F. Halleck & Charles Halleck.

TERRITORY OF COLORADO,
County of Arapahoe :

This deed was filed for record at 2½ o'clock p.m., March 30th, 1868, and duly recorded in book 18, page No. 186.

W. D. ANTHONY,
Recorder.

Fees, $2.50. P'd.

EXHIBIT 6.—JOHN R. ELVANS, *M. C.*

196 This deed, made this 6th day of January, in the year of our Lord one thousand eight hundred and sixty-nine, between Joseph B. Cofield, Daniel Witter, Amos Steck, & Richard E. Whitsitt, of the county of Arapahoe and Territory of Colorado, of the first part, and John Roche, of the county of Arapahoe and Territory of Colorado, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar ($1.00) to the parties of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, convey and confirm, unto the said party of the second part, his heirs and assigns, forever, all the following-described lot or piece of land, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit, being lot number (4,) four, in block number forty-one, (41,) in the west division of Denver City.

[Rev. stamp. D. W., Jan'y 6, 1869.]

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto
197 appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever, and the said parties of the first part the aforesaid lots or piece of land unto the said party of the second part, his heirs and assigns, against the claim or claims of all and every person whatsoever claiming or to claim the same by, through, or under the parties of the first part, doth and will warrant and forever defend by these presents.

In witness whereof the said party of the first part has hereunto set their hands and seal the day and year first above written.

DANIEL WITTER. [SEAL.]
JOSEPH B. COFIELD. [SEAL.]
AMOS STECK. [SEAL.]
RICHARD E. WHITSITT. [SEAL.]

Signed, sealed, and delivered in presence of—
EDWARD P. JONES.

TERRITORY OF COLORDO,
County of Arapahoe:

SEAL. EDWARD P. JONES NOTARY PUBLIC, ARAP- COUNTY, COLORADO.

I, Edward P. Jones, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Daniel Wilter, Joseph B. Cofield, Amos Steck, and Richard E. Whitsitt, personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day
198 in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this sixth day of January, A. D. 1869.

EDWARD P. JONES,
Notary Public.

(Indorsed:) 2069. Warranty deed. J. B. Cofield, Daniel Witter, R. E. Whitsitt, & Amos Steck, to John Roche.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

This deed was filed for record at 2 p. m., January 8th, 1869, and duly recorded in book 20, page 251, No. .

W. D. ANTHONY,
Recorder.

Fees, $2.60. Paid.

EXHIBIT 7.—JOHN R. ELVANS, *M. C.*

Know all men by these presents that I, Judson H. Dudley, of the city, county, and State of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Charles G. Chever, of Denver, Colorado Ter'y, my true and lawful attorney, for me and in my name, place, and stead, to sell and convey to any person or persons whomsoever, and for such sums as he may determine,
199 all or any part of lots or parcels of land lying within the Territory of Colorado, giving and granting unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or be done by virtue hereof.

[Rev. stamp. J. H. Morrison, collector. Oct. 21, 1871.]

In witness whereof I have hereunto set my hand and seal, the

thirtieth day of May, in the year one thousand eight hundred and sixty-seven.

JUDSON H. DUDLEY. [SEAL.]

Sealed and delivered in presence of—
CHARLES NETTLETON,
NATHANIEL GILL.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of May, A. D. 1867, before me, Charles Nettleton, a commissioner of deeds of the Territory of Colorado in and for the State of New York, duly appointed and
200 commissioned under and by virtue of the laws of said Territory, duly sworn and dwelling in said city of New York, personally appeared Judson H. Dudley, personally known to me to be the individual described in, and who executed, the within judgment as appointor, and he acknowledged to me that he had executed the same as his act and deed, freely and voluntarily, and for the uses and purposes therein mentioned.

CHARLES NETTLETON, COMMISSIONER FOR COLORADO IN THE STATE AND CITY OF NEW YORK. SEAL.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of May, A. D. 1867.

CHARLES NETTLETON,
Commissioner for the Territory of Colorado in New York.

Internal revenue-stamps to the amount of one dollar affixed to the within instrument and cancelled by me at the request of J. H. Dudley this 21st day of October, A. D. 1871. Penalty remitted.

JOHN H. MORRISON,
Collector Internal Revenue, District of Colorado.

(Indorsed:) Judson H. Dudley to Charles G. Chever. Dated 186 . Power of attorney.

201 EXHIBIT S.—JOHN R. ELVANS, *M. in C.*

NEW YORK, *May 30th*, '67.

CHARLES G. CHEVER, Esq,
Denver, Colo.:

FRIEND CHEVER: Enclosed I send you a full power of atty. to dispose of the property, as the letter from you this morning of May 19th says you have no return from the Omaha power. The whole telegraph business from Denver & to Denver is rotten somewhere. But this will confirm anything you may have done; and as I don't want Dave to suffer in any way for an accommodation to me, I forward this at once. The amt. due him is $2,500, with interest, (bank rates, I suppose them,) from 7th March last. The balance he will forward if he has not already. I know that you and he will do whatever should seem proper and right in the matter. With best regards to all, I am, as ever,

Your friend,

J. H. DUDLEY.

(Indorsed:) J. H. Dudley, N. Y., May 30, '67. June 10.

202 EXHIBIT 9.—JOHN R. ELVANS, *M. C.*

NEW YORK, *March* 11, '67.

CHARLES G. CHEVER, Esq., *Denver.*

FRIEND CHEVER: I telegraphed you on the 8th to "deed my property to D. H. Moffat, jr., and give the deed to George Kassler. This was done for security for a certain operation here, but you must consider it confidential. You may continue to offer them and sell off as fast as possible, as I want to use the money in business here, depositing the funds recd. in the 1st National Bk. Dave will be home in a few days. No news of any importance.

Truly, your friend,

J. H. DUDLEY.

(Indorsed:) J. H. Dudley. N. Y., Mch. 11, '67. April 10, '67. Answ'd. April 21, '67.

EXHIBIT 10.—JOHN R. ELVANS, *M. C.*

Private.] NEW YORK, *May 7th*, 1867.

203 CHAS. G. CHEVER, Esq., *Denver, Colo.:*

FRIEND CHEVER: Yours of 24 ult. was recd. yesterday. The two letters spoken of were advertised in March and sent to dead-letter office. They will doubtless be returned to you direct. I had been anxiously waiting for letters from you in regard to sale of property. I borrowed $2,500 of Dave Moffat, and wanted him to sell the property immediately on his arrival. He telegraphed me he can get $5,000 only for the whole. That amount seems very small. I don't like to come out to Denver again just now, but want to get something for my property, and want to pay him his money. Can you not get more than that? Certainly the property ought to be worth $8,500.00 or $9,000. I wish you would give your attention to it, and make sales of it immediately, if possible. Telegraph me the highest price you can realize for it on receipt of this, and Dave can allow you to deed and deposit money then to forward, or when you pay him his $2,500, with interest, you can forward yourself. I recd. the blank deed, but as the property is to be sold, Dave will not care to re-deed. The power of attorney can be completed by sending to Omaha and having the certificate to the regularity of the notarial seal made. I look to you to notify me as soon as possible
204 after the receipt of this, by telegraph, what you can do. I want money here very much, as also to pay Dave, but don't wish to sacrifice or be obliged to come out.

This is confidential.

Truly yours, &c.,

J. H. DUDLEY.
73 *Maiden Lane, New York.*

(Indorsed:) J. H. Dudley. N. York, May 7, '67. May 17, '67. Ans'd May 19, '67.

EXHIBIT 11.—JOHN R. ELVANS, *M. C.*

NEW YORK, *May 29th*, '67.

CHAS. G. CHEVER, Esq., *Denver, Colo.:*

FRIEND CHEVER: Your telegram of 22nd inst. was by some delay not

reed. till yesterday, and I send to-day this. Moffat has authority to sell the whole. See him. I should say sell had I not already told Dave to sell the whole at the rate which he has advised. I suppose it is already done now, as he has had the authority to do it long enough.

205 Yours, truly,

J. H. DUDLEY.

(Indorsed:) J. H. Dudley, N. Y., May 29, '67. June 10, '67.

EXHIBIT 12.—JOHN R. ELVANS, *M. C.*

TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of Colorado Territory, in & for said county of Arapahoe, of the January term, 1870, in chancery sitting.

JOSEPH B. COFIELD ET AL., COMPLTS.,
vs.
ALFRED E. TILTON ET AL., DEFTS.

Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Erastus F. Halleck, & Charles Halleck, all being duly sworn according to law, each for himself, doth depose and say, that within the last ten days they, and each of *of* them, have made diligent search among their papers, in the place where they usually keep papers of the kind hereinafter named, for the original following-named deeds, to wit:

206 First. A deed dated August 16th, A. D. 1867, from Joseph B. Cofield to Daniel Witter and Richard E. Whitsitt, for lots 13 and 14, in block 129, and 11 & 12, in block 78, east division, Denver City, Arapahoe County, Colorado Territory, which deed is recorded in book 15, page 350, of the records of said county.

Second. A deed dated January 21st, 1867, from Judson H. Dudley to John Alexander, for lots 5 & 6, in block 137, in said east division of said city, which deed is recorded in book 14, at page 328, of the records of said county.

Third. A deed dated October 8th, 1867, from the said Cofield, Witter, and Whitsitt to John Jaeger, for lots 15 & 16, in block 62, of the said east division of the said city, which deed is recorded in book 15, at page 630, of the said records.

Affiants further say they have been unable to find the said original deeds or any of them after the said research, and further say that the said deeds, and all & every of them, are not in the possession of the said affiants or any of them, and that it is not in the power of the said affiants, or any of them, to produce the originals of the said deeds or any of them.

JOSEPH B. COFIELD.
DANIEL WITTER.
RICHARD E. WHITSITT.
CHARLES HALLECK.
ERASTUS F. HALLECK.

207 Subscribed & sworn to by the above-named affiants before me this 6th day of November, A. D. 1871.

SAM. S. LANDON, NOTARY PUBLIC. SEAL. ARAPAHOE CO., COLORADO.

SAM. S. LANDON,
Notary Public.

(Indorsed:) J. B. Cofield et al. A. E. Tilton. Aff't about certain deeds.

EXHIBIT 13.—JOHN R. ELVANS, *M. C.*

Warranty deed.—Judson H. Dudley to John Alexander.—Filed for record Nov. 4th, A. D. 1867, *at* 4½ *o'clock p. m.*

This deed, made this twenty-first day of January, in the year of our Lord one thousand eight hundred and sixty-seven, between Judson H. Dudley, of the county of Arapahoe, and Territory of Colorado, of the first part, and John Alexander, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of five hundred dollars, ($500.00,) to the said party of the first part, in hand paid by the said party of the second part, the receipt whereof is hereby con-
208 fessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs, and assigns, forever, all the following described lots or pieces of land, situate, lying, and being in the county of Arapahoe, and Territory of Colorado, to wit: Being lots number five (5) and six, (6,) in block one hundred and thirty-seven, (137,) in the east division of Denver City, as surveyed by Frederick J. Ebert: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs, and assigns forever. And the said party of the first part the aforesaid lots or pieces of land unto the said party of the second part, his heirs, and assigns, against the claim or claims of and every person whatsoever claiming, or to claim, the same by, through, or under the party of the first part, doth and will forever defend by these presents.

In witness whereof the said party of the first part has hereto set *their* hands and seals the day and year first above written.

209 JUDSON H. DUDLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
RICHARD E. WHITSITT.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alfred Sayre, a notary public in and for said county in the Territory aforesaid, do hereby certify that Judson H. Dudley, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this twenty-first day of January, A. D. 1867.

[OFFICIAL SEAL.] ALFRED SAYRE,
Notary Public

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and recorder in and for said county, in the Territory aforesaid, do hereby certify that the above and foregoing is a true and correct copy of deed from Judson H. Dudley to John Alexander, as found recorded in book 14, page 328, of
210 Arapahoe County records.

Witness my hand and official seal this 23d day of October, A. D. 1871.

SEAL OF ARRAPAHOE COUNTY, COLORADO TERRITORY.

JAMES W. ROSS,
Deputy County Clerk and Recorder.

[Internal-revenue stamp of 50c. attached.]

EXHIBIT 14.—JOHN R. ELVANS, *M. C.*

Warranty deed.—Daniel Witter et al. to John G. Jaeger.—Filed for record January 27th, A. D. 1868, *at* 9½ *o'clock a. m.*

This indenture, made this eighth day of October, in the year of our Lord one thousand eight hundred and sixty-seven, between Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt, of the county of Arapahoe and Ter'y of Colorado, of the first part, and John G. Jaeger, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of four hundred dollars, lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have
211 granted, sold, conveyed, and confirmed, and by these presents do grant, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, forever, all the following described lots or parcels of land, being in the county of Arapahoe, and Territory of Colorado, to wit: Lots number fifteen (15) and sixteen, (16,) in block number sixty-two, (62,) in Denver City, east division, together with the tenements, hereditaments, and appurtenances thereunto belonging: To have and to hold the above-described premises with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt, parties of the first part, for themselves and their heirs, executors, and administrators, do covenant and agree with the said party of the second part, his heirs and assigns, that at the time of the sealing and delivery of these presents, have good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will forever defend.

In witness whereof the said parties of the first party have hereunto set their hands and seals the day and year first above written.

[Revenue stamp 50 cents.]

DANIEL WITTER. [SEAL.]
212 RICHARD. E. WHITSITT. [SEAL.]
JOSEPH B. COFIELD. [SEAL.]

Signed, sealed, and delivered in presence of—

TERRITORY OF COLORADO,
County of Arapahoe, ss :

I, Monroe L. Horr, clerk of the supreme court of the Territory of aforesaid, do hereby certify that Daniel Witter and Richard E. Whisett, personally known to me as the persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 15th day of October, A. D. 1867.

[SEAL.] MONROE L. HORR, *Clerk.*

STATE OF ILLINOIS,
County of Cook, ss :

I, William L. Church, of the circuit court of Cook County, in the State aforesaid, do hereby certify that Joseph B. Cofield, who is personally known to me as the real person whose name is subscribed to, and who executed the annexed deed, this day appeared before me and acknowledged that he executed the said instrument freely and voluntarily for the uses and purposes therein expressed.

213 In witness whereof *the* I have hereunto set my hand and *official* the seal of said court, at Chicago, in said county, this 21st day of October, A. D. 1867.

[SEAL.] WM. L. CHURCH,
Clerk of the Circuit Court of Cook County, Ill.

TERRITORY OF COLORADO,
County of Arapahoe, ss :

I, Webster D. Anthony, county clerk and recorder in and for the county, in the Territory aforesaid, do hereby certify that the above and foregoing is a true and correct copy of deed from Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt to John Jaeger, as same appears of record in book 15, page 630, of Arapahoe County records.

Witness my hand and official seal this 25th day of October, A. D. 1871.

{ ARAPAHOE COUNTY, COLORADO TERRITORY. SEAL. } WEBSTER D. ANTHONY,
County Clerk and Recorder.

EXHIBIT 15.—JOHN R. ELVANS, *M. C.*

Warranty deed.—Joseph B. Cofield to Daniel Witter and Richard E. Whitsitt.—Filed for record Aug. 23, A. D. 1867, at 9½ o' a. m.

This indenture, made this sixteenth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, between Joseph B. Cofield, of the county of Arapahoe, and Territory of Colorado, of the first part, and Daniel Witter and Richard E. Whitsitt, of the county of Arapahoe, and Territory of Colorado, of the second part, witnesseth :

214 That the said party of the first part, for and in consideration of the sum of five hundred ($500.00) dollars, lawful money of the United States, to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hath granted, sold, conveyed, and confirmed, and by these presents doth grant, sell, convey, and confirm unto the said parties of the second part, and to their heirs and

assigns, forever, all of the following described lots or parcel' of land, being in the county of Arapahoe, and Territory of Colorado, to wit:

Lots thirteen and fourteen, in block one hundred twenty-nine, and lots eleven and twelve, in block seventy-eight, situate and being in the east division of Denver City, Arapahoe County, Colorado Territory, together with all the tenements, hereditaments, and appurtenances thereunto belonging:

To have and to hold the above-described premises with the appurtenances unto the said parties of the second part, their heirs and assigns, forever. And the said Joseph B. Cofield, party of the first part, for himself and his heirs, executors, administrators, doth covenant and agree with the said parties of the second part, their heirs and assigns, that at the time of the sealing and delivery of these presents hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid, and the above bargained premises in the quiet and peaceable possession of the said parties of the second
215 part, their heirs and assigns, against all and every person or persons lawfull' claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JOSEPH B. COFIELD. [SEAL.]

Signed, sealed, and delivered in presence of—
EDW'D PAUL JONES.

[Internal revenue-stamp of 50c. attached.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Alex. W. Atkins, a notary public in and for said county, in the Territory aforesaid, do hereby certify that Joseph B. Cofield, personally known to me as the person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the same as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this sixteenth day of August, A. D. 1867.

[SEAL.] ALEX. W. ATKINS,
Notary Public.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

216 I, Webster D. Anthony, county clerk and recorder in and for said county, in the Territory aforesaid, do hereby certify that the above and foregoing is a true and correct copy of deed from Joseph B. Cofield to Daniel Witter and Richard E. Whitsitt, as found recorded in book 15, page 350, of Arapahoe County records.

{ARAPAHOE COUNTY, COLORADO TERRITORY. SEAL.} Witness my hand and official seal this 23d day of October, A. D. 1871.

JAMES W. ROSS,
Deputy County Clerk and Recorder.

EXHIBIT 16.—JOHN R. ELVANS, *M. C.*

NEW YORK, *May 11th*, 1867.

D. H. MOFFATT, JR.,
Denver, Colo.:

"BLISTER & SODA:" Your telegram about $5,000 for property was duly rec'd, and as I could not conveniently "do the needful" just then, thought I would be able to in a few days, but cannot. Yesterday I received another telegram which directed me to answer to sell. I want you to get your funds if you are in want, even at a sacrafice, as I promised. It seems like damned robbery, but you are not to blame, of
217 course. I suppose one wants to buy property as cheap as possible, and that's all right, but if deduction is made on account of title being clouded, they should accept a quitclaim deed. Do the best you can, Dave, and remit proceeds left immediately, as I have telegraphed. There is also to be remitted a $250.00 balc. of two lots sold and due the last of April, which I presume has been paid in to the 1st National; if not, please collect. Gregory has gone to the devil, and seems to be getting "wuss & wuss;" and that's all right, if it goes to nothing. Regards to the b*h*oys and also the g*h*als. Don't delay about remitting the balance of the money, as I have lost so much that I want to try and make up some.

Yours truly,

"DUD."

EXHIBIT L.—JOHN R. ELVANS, *M. C.*

$2,592.80.] DENVER, C. T., *Sep. 17th*, 1864.

Four months after date we promise to pay to A. E. and C. E. Tilton, or order, the sum of twenty-five hundred & ninety-two $\frac{80}{100}$ dollars, for value received, negotiable, and payable without defalcation or discount, with interest at the rate of two per cent. per month from date until paid.

DUDLEY & AMES.

[Rev. stamp. D. & A., Sept. 17, '64.]

(Indorsed:) Filed Oct. 8th, 1868. Henry A. Clough, clerk.

218, 219 EXHIBIT M.—JOHN R. ELVANS, *M. C.*

DENVER, COLORADO, *March 23d*, 1865.

Dudley & Ames bought of A. E. & C. E. Tilton:

1864.					
Sept. 15.	1 bot. whiskey				1 50
	" " del. S. P. Ames		1 00		2 00
17.	5 bbls. alcohol, 41⅝, 42⅞, 42⅝, 43⅞, 42⅞ = 210 gals	@	6 00		1,260 00
5	" high wines, 40½, 41⅛, 41⅞, 42⅛, 42⅝ $\frac{40}{100}$ = 289	@	3 00		867 50
5	" Bourbon whiskey, 43⅞, 42 , 42, 42⅞ 42⅝ = 210	@	4 50		945 00
1	" Jamaica rum, 43⅝	@	4 00		172 00
1	" St. Croix " 42	@	4 00		168 00
1	gin, 43⅝	@	4 00		172 00

	1 Stoughton, 41⅌	@ 4 50		184 50
	1 Plant. bitters, 43⅌	@ 4 50		193 50
	4½ casks brandy, 23⅌, 22⅌, 22⅌, 23⅌= 90⅌	@ 5 00		450 00
	5 cases absint'e	@ 18 00		90 00
	3 " cordials	@ 15 00		45 00
	3 " curaçoa	@ 16 00		48 00
	2 " sardines	@ 70 00		140 00
	3 " brandy	@ 20 00		60 00
	2 " kegs	@ 2 50		5 00
	1 doz. knives & forks			80
	1 " shovels			15 00
	1 " sluice forks			24 00
	1 " " "			31 00
	5 cases oysters	@ 11 00		55 00
	½ doz. gold scales in cases	3 00		18 00
	2 prs. gold scales No. 3	12 00		24 00
	1 " " " No. 3			25 00
	1 " " " No. 4			30 00
	1 letters-balance			4 00
	6 doz. elephan tobacco	1 50		9 00
	6 baskets annisette	5 00		30 00
220, 221	2 boxes pepper	@ 6 00		12 00
	6 bales tobacco	3 00		18 00
	6 doz. do. pouches	2 50		15 00
	6 " gre'nback "	1 50		9 00
	6 " any other money "	1 50		9 00
	6 " Garibaldi	2 00		12 00
	2 " small bowie-knives	18 00		36 00
	2 " large " "	24 00		48 00
	3 " overhauls	18 00		36 00
	1 " gray woolen shirts			35 00
	1 " striped			25 00
	1 " fancy			36 00
	1 " red			36 00
	1 " hickory cotton shirts			15 00
	1 " Union check			18 00
	2 " wool socks	4 00		8 00
	½ " candlesticks, small	6 00		3 00
	8 pr. " large	1 50		12 00
	⅓ gross pipes, No. 27315			3 00
	⅓ " " mk. "J. W."			8 00
	⅓ " " B			8 00
	1 doz. rosewood pipes			2 00
	1 " " No. 97			2 00
	1 applewood	1 75		1 75
	1 doz. pipes No. 30			5 00
	1 " " No. 69			2 50
	1 " " No. 1445			2 00
	1 " " No. 37			1 50
	1 " " No. 4929			2 25
	1 " " No. 345			1 50
	1 " " No. 279			1 25
	1 " " " 328			2 50
	1 " pipes No. 5193½			1 75
	1 " " No. 316			2 50

222, 223	dz.	pipes No. 1475	2 25	4 50
	1 "	" No. 147		2 25
	2 "	" No. 327	3 00	6 00
17.	1 bot.	bitters del. S. P. Ames		1 00
	1 "	gin " "		1 00
	7 pr.	socks	50c.	3 50
	3 "	shirts	3 00	9 00
19.	1 doz.	pr. socks	50	6 00
	6 gals.	whiskey	3 00	18 00
	1 bale	tobacco	3 00	3 00
	1 keg			2 25
				5,592 30

CONTRA.

Error (overcharge)	10 15
S. P. Ames	3,000 00
	3,010 15

224 EXHIBIT 17 P.—JOHN R. ELVANS, *M. in C.*

Stipulation.

TERRITORY OF COLORADO,
County of Arapahoe, ss :

In the district court of the first judicial district of Colorado Territory, in & for the said county of Arapahoe, in chancery of the April term A. D.

JOSEPH B. COFIELD ET AL., COMPLAINANTS,
vs.
ALFRED E. TILTON, ET AL., DEFENDANTS.

It is hereby stipulated and agreed by & between the solicitors for the complainants & the defendants, & the same shall be so taken & regarded upon the final hearing of this cause in said court without further proof, as follows, viz :

The solicitors for the defendants stipulate & agree—

First. That Exhibits A, B, C, F, G, H, I, & K, attached to complainants' bill are true copies of original papers filed in the attachment suit referred to in said bill & that the same are to be regarded in evidence without objection.

Second. That at the December term, A. D., 1866 of said court, &, to wit, on the 27th day of January, A. D. 1866, judgment
225 was rendered in said suit against the said Dudley for the sum of $2,591.44 damages, and $18.05 costs, as alleged in said bill.

Third. That after said judgment was so rendered the same was reversed by the supreme court of said Territory at the July term thereof, A. D. 1867, and to wit, on the 10th day of February, A. D. 1868.

Fourth. That after the said reversal by the said supreme court, all the amendments referred to in said bill were made in said attachment suit.

Fifth. That Exhibits 13, 14 & 15 put in evidence by the complainants are all correct transcripts or copies from the records of the clerk & recorder of said county.

Sixth. That Exhibits 1, 2, 3, 4, 5, & 6, put in evidence by the complainants were all recorded in the records of said clerk & recorder at the date appearing from the respective endorsements thereon by the recorder.

The solicitors for the complainants so stipulate & agree—

First. That, Exhibit M put in evidence by the defendants is a correct copy of a bill of particulars which was attached to the original & amended declarations filed in said attachment suit.

Second. That the amendments made in said attachment suit were made by leave of the court; and

Third. That a certificate of the levy of the writ of attachment in said suit on the property in question was duly made and filed by the officer making said levy, with the clerk & recorder of said county of
226 Arapahoe, where said real estate is situated, as required by law, and that the same was duly recorded by said clerk and recorder, on the 29th day of August, A. D. 1865.

E. L. SMITH & W. C. KINGSLEY,
Solrs. for Complainants.
CHARLES & ELBERT,
Sols. for Tiltons' Defts.

Dated Sept. 12th, 1872.

(Endorsed:) J. B. Cofield et al. vs. A. E. Tilton et al. Stipulation. Master's report. Filed in district court, Sept. 13th, 1872. Geo. H. Mills, clerk.

227, 228 *Copies from book marked "Exhibit N" of entries therein which were referred to in evidence:*

On, to wit:

Page 370 of said book, under date of Sept. 15, 1864:

Dudley & Ames, Dr	$1 50
To mdse., 1 bottle whiskey	1 50

Page 371 of said book, under date of Sept. 17, 1864:

Dudley & Ames, Dr.

To mdse.			5,066 30
5 bbls. alcohol, 43, 42, 42, 42, 42=210 galls	6 00	1,260 00	
5 " h. wines, 41, 40½, 42, 41, 42=289 glls.	3 00	867 00	
5 " Bourbon whiskey, 42, 42, 43, 42, 41= 210 galls	4 50	945 00	
1 " Jamaica rum, 43 galls	4 00	172 50	
1 " St. X " 42 "	4 00	168 00	
1 " Gin " 43 "	4 00	172 00	
1 " Stoughton 41 "	4 50	184 50	
1 " Plantation bitters, 43 "	4 50	193 50	
4⅛ casks brandy, 23, 22, 23, 22=90 galls	5 00	450 00	
5 cases absinth'	18 00	90 00	
3 " cordials	15 00	45 00	
3 " curaçoa	16 00	48 00	
2 " sardines	70 00	140 00	
3 " brandy	20 00	60 00	
2 kegs	2 50	5 00	
1 doz. knives & forks		80	

	1 " shovels			15 00
229	1 doz. sluice forks			24 00
	1 " "			31 00
5 cases oysters			11 00	55 00
½ doz. gold scales in cases			3 00	18 00
2 pair " " No. 0			12 00	24 00
1 " " " " 3				25 00
1 " " " " 4				30 00
1 " letter-balances				4 00
6 doz. elephant tobacco			1 50	9 00
6 baskets annissette			5 00	30 00
				— 5,066 30

Page 372 of said book, under date of Sept. 17, 1864:

Dudley & Ames, Dr.

To mdse			480 25
2 boxes pepper	6 00		12 00
6 bales tobacco	3 00		18 00
6 doz. " in pouches	2 50		15 00
6 " " greenback	1 50		9 00
6 " " any other man's	1 50		9 00
6 " " Garibaldi	2 00		12 00
2 " small bowie-knives	18 00		36 00
2 " large " "	24 00		48 00
2 " overhauls	18 00		36 00
1 " gray wool shirts			35 00
1 " striped " "			25 00
1 " fancy " "			36 00
1 " striped " "			36 00
1 doz. red " "			36 00
230 1 doz. hickory cotton-shirts			15 00
1 " Union check			18 00
2 " wool socks	4 00		8 00
¼ " small candle-sticks	6 00		3 00
8 p'rs large " "	1 50		13 00
⅓ gross pipes, No. 27315			3 00
⅓ " " marked St	24 00		8 00
⅓ " " " B	24 00		8 00
1 doz. rosewood pipes			2 00
1 " pipes, No. 97			2 00
1 " " apple-wood	1 75		1 75
1 " " No. 30			5 00
1 " " " 169			2 50
1 " " " 1445			2 00
1 " " " 37			1 50
1 " " " 4929			2 25
1 " " " 345			1 50
1 " " " 279			1 25
1 " " " 328			2 50
1 " " " 5193½			1 75
1 " " " 316			2 50
2 " " " 1445	2 25		4 50
1 " " " 147			2 25
2 " " " 327	3 00		6 00

Page 373 of said book, under date of Sept. 17th, 1864:

T. P. Ames, Dr.

	To mdse			2 00
231	1 bottle bitters		1 00	
	1 bot. gin		1 00	

And also on page 373 of said book, bearing date Sept. 17th, 1864:

Dudley & Ames, Dr.

To mdse				21 50
7 p'rs socks		50	3 50	
3 shirts		3 00 ea.	18 00	

Page 374 of said book, bearing date Sept. 19th, 1864:

Dudley & Ames, Dr.

To mdse				29 25
1 doz. p'rs socks		50	6 00	
6 galls. whiskey		3 00	18 00	
1 bale tobacco		3 00	3 00	
1 keg			2 25	

Page 388 of said book, bearing date Oct. 8th, 1864:

Sundries, Dr.

To Dudley & Ames			5,602 95
Error, (overcharge)		10 15	
T. P. Ames		3,000 00	
Bills rec'ble payable in 4 ms. to bal. a/c		2,592 80	

232 *Copies of so much of book marked "Exhibit O," as is referred to in the evidence taken by the master in this cause.*

Under date of September 15th, 1864:

Hank Marshall, Dr.

1 bot. whiskey				1 50
Charge to D. Ames.				

Under date of September 17th, 1864:

Dudley & Ames, Dr.

To 5 bbls. alcohol, 42, 42, 41=125; 42, 43, 25=210 galls.			6 00	1,260 00
" " bbls. h. wines, 41, 40½=81½; 42, 41, 42, 81½=206½; 40 galls.; 289 galls.		@	3 00	867 00
" " bbls. bourbon, 43, 42, 42=137; 41, 42, 137=210 galls			4 50	945 00
" 1 bbl. Jam. rum, 43 galls.			4 00	172 00
" 1 bbl. St. X rum, 42 galls.			4 00	168 00
" 1 " gin, 43 galls.			4 00	172 00
" 1 " Stoughton, 41 galls.			4 50	184 50

" 1 "	p. bitters, 43 "	4 50..		193 50
" ⅛	casks brandy, 22, 23, 40; 23, 22, 22, 45, less 1 cask, 22 galls.; 90 galls	5 00..		450 00
" 5	cases absenthe	18 00..		90 00
" 3 "	cordials	15 00..		45 00
" 3 "	curaçoa	16 00..		48 00
" 2 "	sardines	70 00..		140 00
" 3 "	brandy	20 00..		60 00
" 2	kegs	2 50..		5 00
" 1	doz. knives and forks	80..		80
	" 1 " shovels			15 00
233	To 1 doz. sluice-forks	24 00..		24 00
	" 1 " " "	31 00..		31 00
" 5	cases oysters	11 00..		55 00
" ½	doz. gold-scales in case	3$ ..		18 00
" 2	pair " " No. 0	12 00..		24 00
" 1	" " " " 3	25 00..		25 00
" 1	" " " " 4	30 00..		30 00
" 1	" letter-balances	4 00..		4 00
" 6	doz. elephant tobacco	1 50..		9 00
" 6	baskets annieseett	5 00..		30 00
" 2	boxes pepper	6 00..		12 00
" 6	bales tobacco	3 00..		18 00
" 6	doz. pouches tobacco	2 50..		15 00
" 6 "	greenback "	1 50..		9 00
" 6 "	any-other-man's "	1 50..		9 00
" 6 "	Garibaldi "	2 00..		12 00
" 2 "	small bowie-knives	18 00..		36 00
" 2 "	large " "	24 00..		48 00
" " "	overhauls	18 00..		36 00
" 1 "	gray wool shirts	35 00..		35 00
" 1 "	striped wool "	25 00..		25 00
" 1 "	fancy wool shirts	36 00..		36 00
" 1 "	striped " "	36 00..		36 00
" 1 "	red " "	36 00..		36 00
" 1 "	hickory cotton "	15 00..		15 00
" 1 "	Union check "	18 00..		18 00
" 2 "	socks, wool	4 00..		8 00
" ½ "	small candlesticks	6 00..		3 00
	" 8 pair large " "	1 50..		13 00
234	To ⅓ gross pipes, No. 27315			3 00
	" ⅓ " marked "W"	24 00..		8 00
" ⅓ "	" "B"	24 00..		8 00
" 1	doz. rosewood pipes	2 00..		2 00
" 1 "	pipes, marked "97"	2 00..		2 00
" 1 "	apple-wood pipes	1 75..		1 75
" 1 "	" No. 30	5 00..		5 00
" 1 "	" " 169			2 50
" 1 "	" " 1445			2 00
" 1 "	" " 37			1 50
" 1 "	" " 4929			2 25
" 1 "	" " 345			1 50
" 1 "	" " 279			1 25
" 1 "	" " 328			2 50
" 1 "	" " 5193			1 75
" 1 "	" " 316			2 50

" 2 "	" "	1445	2 25		4 50
" 1 "	" "	147			2 25
" 1 "	" "	327	3 00		6 00
					$5,546 55

T. P. Ames, Dr.

To 1 bottle bitters			1 00
" " gin			1 00
			2 00

Dudley & Ames, Dr.

To 7 prs. socks		50	3 50
" 3 pairs shirts		3 00	9 00
			12 50

235 Under date of Sept. 19th, 1864:

Dudley & Ames, Dr.

To 1 doz. prs. socks		50	6 00
" 6 galls. whiskey		3 00	18 00
" 1 bale tobacco		3 00	3 00
" 1 keg			2 25
			29 25

Under date of Oct. 1st, 1864:

T. P. Ames, Dr.

To 1 bottle cocktail			1 00

Under date of Oct. 8th, 1864:

Dudley & Ames, Cr.

By error, (overcharge)			10 15
" T. P. Ames			3,000 00
" note, 4 mos., to bal			2,592 80
			5,602 95
			10 15
			5,592 80

236, 237 And afterwards, to wit, on the 13th day of January, A. D. 1873, the same being one of the regular juridical days of the October term, A. D. 1872, of said court, the following other proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD ET AL. *vs.* A. E. & C. E. TILTON. } In chancery.

Now on this day co ne the said parties, by their solicitors, respectively,

and thereupon, upon motion of the said complainants, it is ordered by the court that the said complainants have leave to file a bill supplemental to the bill by them heretofore filed herein.

And afterwards, to wit, on the 18th day of January, A. D. 1873, came the said complainants, by their solicitors, and filed in said court their supplemental bill of complaint, in pursuance of the order of said court heretofore made in this behalf, which said supplemental bill is in words and figures as follows, to wit:

238 THE TERRITORY OF COLORADO,
Arapahoe County, ss:

In the district court of the 1st judicial district of Colorado Territory, and for Arapahoe County.

JOSEPH B. COFIELD, DANIEL WITTER, RICHARD E. Whitsitt, John Roche, Erastus F. Halleck, Charles Halleck, and Amos Steck, complainants,
vs.
ALFRED E. TILTON, CHARLES E. TILTON, JUDSON H. Dudley, David J. Cook, and John Alexander, defendants.

To the Hon. E. T. Wells, associate justice, &c., & judge of the first judicial district of Colorado Territory, & for Arapahoe County, in chancery sitting:

Humbly complaining, show unto your honor your orators, Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, John Roche, Erastus F. Halleck, Charles Halleck, and Amos Steck:

That your orators, on or about the seventh day of December, A. D. 1869, exhibited their original bill of complaint in this honorable court against Alfred E. Tilton, Charles E. Tilton, David J. Cook, and John Alexander, which original bill of complaint was by an order of this honorable court, bearing date the 22d day of July, A. D. 1870, authorized to be amended, and in pursuance of said order the said original bill was amended, and said amendments duly filed in said court on the 19th day of September following, and such original and amended bill were exhibited against the said defendants mentioned therein, by which original and amended bill of complaint your orators stated such several matters and things as are therein for that purpose more particularly mentioned and set forth herein.

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That on the 28th day of August, A. D. 1865, the said defendants, Alfred E. and Charles E. Tilton, by their agent, filed with the clerk of the district court of the first judicial district of Colorado Territory, and for Arapahoe County, an affidavit in attachment against the defendants, Dudley and one Thomas P. Ames, doing business under the firm-name of Dudley & Ames, praying an attachment against the property of the defendant', Dudley & Ames, to satisfy a claim of the said A. E. & C. E. Tilton, defendants herein, against said Dudley & Ames, of two thousand six hundred & twenty $\frac{60}{100}$ dollars, for goods, wares, and merchandise theretofore sold and delivered them, and upon the filing of a proper bond, as required by law, a writ of attachment was thereupon issued and put into the hands of the sheriff of Arapahoe County to execute, and the said sheriff, in pursuance and by virtue

thereof, levied upon certain lots or parcels of land claimed to be the property of the defendant, Dudley, a reference to the original bill of your orators will more fully show, which levy was made to secure the payment of the claim of the defendants, Alfred E. and Charles E.
240 Tilton, set forth in the affidavit mentioned herein. And the said sheriff, after making the levy, on the 28th day of August, A. D. 1865, filed with the recorder of Arapahoe County a certificate of said levy on the succeeding day to that of the levy.

And on the 25th day of November, A. D. 1865, the defendants, A. E. & C. E. Tilton, by their attornies, filed in said attachment-proceeding, on the part of the defendants Alfred E. and Charles E. Tilton, against defendant Judson H. Dudley, a declaration, claiming damages in said declaration in the sum of three thousand dollars.

And it was further shown by your orators, that your orators Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, and Amos Steck purchased and became the owners of the lots levied upon by the said defendant Cook, as sheriff, on or about the 23 day of May, 1867, except certain lots or parcels of land specified and set forth in your orators' original bill of complaint, reference to which is hereby made. And that your orators Cofield, Witter, and Whitsitt, with the consent of the said Steck, on the 8th day of October, A. D. 1867, sold lots 15 & 16, block 62, in East Denver, being lots, amongst others, levied on as aforesaid, to one John G. Jaeger, with a general warranty of title to the same, and that the defendant Judson H. Dudley, on the 21st day of January, A. D. 1867, conveyed lots 5 & 6, in block 137, in the east division of Denver, being lots levied upon as aforesaid, for a valuable consideration, to one John Alexander, and the said Alexander afterwards, on the
241 30th of March, A. D. 1868, conveyed said last-mentioned lots, for a valuable consideration, to your orators Erastus F. and Charles Halleck, and that your orators John Roche was the owner of lot 4, in block 41, in the west division of Denver, by virtue of a deed of conveyance made to him by your orators Cofield, Witter, Whitsitt, and Steck, on the 6th day of January, A. D. 1869, said lot 4 being one of the lots levied upon by the defendant David J. Cook, in pursuance of the attachment aforesaid, and further setting forth and alleging that your orators were the owners of and entitled to the possession of the several lots (together with John G. Jaeger) purchased from said Dudley according to the several interests, as set forth in their original bill of complaint; and further setting forth that the defendants Alfred E. and Charles E. Tilton, on the 12th day of September, A. D. 1868, filed their amended affidavit and an amended bond in said attachment-proceeding, claiming the sum of two thousand six hundred and twenty dollars and eighty cents on an account & promissory note, & for goods, wares, and merchandise sold to the said Dudley and Ames, & for money loaned, laid out, and expended for said Dudley and Ames, and that said note was given for a part of the purchase-price of the goods, wares, and merchandise sold to them, Dudley and Ames, which note was dated the 17th day of September, A. D. 1864, payable to the said defendants, Alfred E.
242 and Charles E. Tilton, four months after date, and for the sum of two thousand five hundred and ninety-two $\frac{80}{100}$ dollars, with interest at the rate of ten per centum per month from date until paid, and also that the said Alfred E. and Charles E. Tilton, by their attornies, filed an amended declaration in said attachment-proceeding against the said Dudley, claiming damages against said Dudley & Ames upon the said promissory note and upon the other counts in said declaration mentioned, in the sum of seven thousand dollars.

And that afterwards the said defendant Dudley, on the 9th day of April, A. D. 1869, authorized the confession of judgment in the said attachment-proceeding by a power of attorney, set forth in said original bill as an exhibit, and upon the said promissory note, and in pursuance of the authority in said power of attorney contained, judgment was confessed by the said Dudley, by his said attorney, upon the said promissory note, with interest thereon, according to the tenor and effect of the note aforesaid, in favor of the defendants Alfred E. & Charles E. Tilton, plaintiffs in said attachment proceeding.

And that on the first day of November, A. D. 1869, the said defendants Alfred E. and Charles E. Tilton, in pursuance of said confession of judgment, recovered a judgment at law in said attachment proceeding in the said district court, against the defendant Judson H. Dudley,
243 for the sum of five thousand six hundred and forty-two $\frac{80}{100}$ dollars, and twenty nine $\frac{50}{100}$ dollars, their costs of suit.

Whereupon the said district court ordered that execution issue therefor, and that special execution and order of sale of the several lots or parcels of land should issue, which lots had been levied upon by virtue of the said writ of attachment sued out of the said district court by the defendants Alfred E. and Charles E. Tilton against the said defendants Judson H. Dudley & Ames, and further setting forth that the said Alfred E. and Charles E. Tilton had sued out of the said court an execution and order of sale of the several lots and parcels of land mentioned and described (amongst others) as having been purchased by your orators, and then owned by them, and one John G. Jaeger, prior to the time of the recovery of the said judgment against the said Dudley by the said Alfred E. and Charles E. Tilton in the district court aforesaid, and that said execution and order of sale were delivered into the hands of the defendant David J. Cook, then and now sheriff of Arapahoe County, to be executed, and that the said Cook, in pursuance of the authority in said execution and order of sale contained, had levied upon and advertised for sale the said lots or parcels of land mentioned and set forth in your orators' said original and amended bill of complaint, which lots had been purchased by your
244 orators and were then owned by them and the said Jaeger, to satisfy the judgment recovered against the said Judson H. Dudley, by the said defendants Alfred E. and Charles E. Tilton, and further setting forth that the said defendant David J. Cook, sheriff, proposed, designed, and threatened to sell the said lots or parcels of land on the 10th day of December, A. D. 1869, being the day of the sale as advertised for the purpose specified, unless restrained from such sale by the injunction-process of your honorable court; and further setting forth that the filing of the amended affidavit and declaration as aforesaid changed the cause of action and also enlarged the demand in said attachment proceeding, and also changed the nature of the indebtedness said to have been due from the said Dudley & Ames to the said Alfred E. and Charles E. Tilton, and that the judgment which had been recovered upon the said amended affidavit and amended declaration was for a much greater sum and amount than could have been recovered upon the original affidavit and declaration, and was a fraud upon the rights of your orators; all which was alleged to have been done with a full knowledge on the part of the said Alfred E. and Charles E. Tilton, defendants; and further setting forth that the said Alfred E. and
245 Charles E. Tilton claimed the right and threatened to collect the said judgment so recovered upon the said enlarged demand and new indebtedness by the sale of the said lots so owned by your orators

and the said Jaeger. And it was further set forth and charged that collection of the said judgment, to be recovered by the said A. E. & C. E. Tilton against the said Dudley by the sale of the said lots so owned by your orators and the said Jaeger, would be a cheat and fraud upon your orators, and work to them an irreparable injury, because your orators had only been notified of the demand of the said Alfred E. and Charles E. Tilton at the time of their purchase of the said lots or parcels of land from the said Dudley, as the same appears in the record in the cause at the time of said purchase; and praying that so much of the said judgment rendered by the said district court in favor of the said Alfred E. and Charles E. Tilton against the said Dudley, as provided for the issuing of a special execution and order of sale of the said lots designated and set forth in said original and amended bill of your orators, reference to which will for greater certainty appear, might be vacated and wholly set aside, and that each and every of said lots and parcels of land might be decreed to be released and discharged, and forever free and clear from the lien of the said judgment so recovered against the said Dudley by the said Alfred E. and Charles E.
246 Tilton; and further, praying that an injunction might issue under the seal of said court to restrain the said Alfred E. and Charles E. Tilton, their attornies, solicitors, officers, or agents, forever, from selling said lots or any of them, or from doing any act whatsoever to enforce the collection of said judgment by the sale of the said lots or parcels of land, and also praying that a temporary injunction might issue under the seal of the said district court, directed to the said Alfred E. and Charles E. Tilton and David J. Cook, their counselors, attornies, solicitors, and agents, commanding them and each of them absolutely to desist and refrain from proceeding further upon the execution issued out of the district court aforesaid for the collection of the said judgment by the sale of the said lots or parcels of land which had been levied upon by virtue of the writ of attachment aforesaid, and thereby owned by your orators and the said Jaeger, from doing any act or thing whatsoever to collect the amount of said judgment by the sale of the said lots or parcels of land.

And your orators show further unto your honor that upon application made, a temporary writ of injunction was issued, directed to the said defendants Alfred E. and Charles E. Tilton, and David J. Cook, sheriff of Arapahoe County, restraining them from selling the said lots or parcels of land as prayed for in your orators said original bill of complaint, and the said Alfred E. and Charles E. Tilton, and Judson H. Dudley,
247 having appeared in the cause, filed their answer to the original and amended bill of complaint of your orators the said Alfred E. and Charles E. Tilton, on the 31st day of October, A. D. 1870, and the said Dudley, on the 3d day of January, A. D. 1871, the said Alexander and Cook having failed to plead or answer to your orators' bill of complaint, although duly served with process to appear.

And your orators further unto your honor that your orators filed their replications to the answers of the said Alfred E. and Charles E. Tilton and Judson H. Dudley on the 7th day of January, A. D. 1871, as of the date of the 12th of November, A. D. 1870, by the order of said court, whereupon the said cause was referred to John R. Elvans, one of the masters of this court, to take the testimony and proofs in said cause upon the original and amended bill of your orators, the answers of the defendants Alfred E. and Charles E. Tilton, and Judson H. Dudley, and the default of the defendants Cook and John G. Jaeger, and upon the replication of your orators to the answers aforesaid.

And the said master, upon the 13th day of September, A. D. 1872, filed his report of the testimony and proofs taken on the part of your orators, and the defendants Alfred E. and Charles E. Tilton, and the said Cook, Dudley & Jager, upon all which there was a hearing before said court, to which testimony and proofs and report your orators refer your honor for more specific information.

248 And your orators show further unto your honor that the said writ of execution which was issued out of the district court aforesaid upon the judgment aforesaid, issued on the 17th day of November, A. D. 1869, commanding the said David J. Cook, sheriff of Arapahoe County, to make the sum of five thousand six hundred and forty-two $\frac{80}{100}$ dollars, recorded as aforesaid, together with interest thereon from the first day of November, 1869, out of the land and tenements, goods and chattels, and chattels real belonging to the said Judson H. Dudley, together with twenty-nine $\frac{50}{100}$ dollars, costs of suit, and also commanding the said defendant Cook to proceed to sell the lots or parcels of land levied upon by virtue of the writ of attachment aforesaid, which lots and parcels of land were owned by your orators and the said Jager, and in pursuance of the said execution and order of sale, the said defendant David J. Cook, sheriff, as aforesaid, levied upon and advertised the said lots or parcels of land for sale, and postponed the sale thereof from time to time by advertising the said several postponements of sale, and upon the 13th day of March, A. D. 1871, sold the said lots or parcels of land, together with other lots not claimed by your orators, to the said Alfred E. Tilton and Charles E. Tilton, for the sum of six thousand six hundred and seventy-five dollars and twenty-five cents, a copy of which execution and order of sale, together with the return of the doings of the said Cook, as sheriff therein, is to this supplemental bill attached, marked "Exhibit A," and which your orators pray may be made part of this their supplemental bill of complaint.

And your orators, for further supplement to the said original and amended bill of complaint of your said orators, show to the court that upon application by your orators to the Hon. C. S. Eyster, then

249 acting as justice of the district court of the 1st judicial district of Colorado Territory, and for Arapahoe County, sitting in equity, to wit, on the 7th day of December, A. D. 1869, a temporary injunction was ordered to be issued, and did issue, restraining the said David J. Cook, sheriff, and the said Alfred E. and Charles E. Tilton, their counsellors, solicitors, and agents, from making sale of said lots or parcels of lands, then claimed to be property of your orators and the said Jager, which writ of injunction was duly served upon the said David J. Cook, sheriff, and defendant herein, and the said Cook thereupon postponed the sale of said lots or parcels of land from time to time and sold the same as hereinbefore stated.

And your orators further show that, on the 13 day of January, A. D. 1871, the said court dissolved the said temporary injunction upon the conditions stated in the order of dissolution, reference to which will fully appear, and which conditions were not complied with by your orators, as will appear fully by this record.

And your orators further show unto honor, by way of supplement, that the said defendant, Cook, sheriff, on the 13th day of December, A. D. 1871, executed and delivered to the said defendants, Alfred E. and Charles E. Tilton, a deed of conveyance of the said lots or parcels

250 of land belonging to your orators and the said Jager, together with other lots therein mentioned, in pursuance of the said sale, according to the provisions of the statute, providing for the conveyance

of lots or lands sold upon execution, which said deed of conveyance was filed for record in the office of the recorder of Arapahoe County on the 26th day of December, A. D. 1871, and is recorded in book No. 33, pages 344 & '5, reference to which will more fully appear.

And your orators charge that by the name aforesaid the said Alfred E. and Charles E. Tilton claim to own, hold, and possess the said lots or parcels of land purchased and owned by your orators and the John G. Jager, by virtue of the sale made by the said defendant Cook.

And your orators further charge that they are entitled to relief against the wrongful acts of the said defendants Alfred E. and Charles E. Tilton and David Cook, in selling and disposing of the said lots or parcels of land purchased by your orators and owned by them and the said John G. Jager.

And your orators therefore pray, by way of supplement to such of the prayers for relief as may be meet and proper in the premises, and contained in the original and amended bill of complaint of your orators, that all proceedings had and taken by the defendants Alfred E. and Charles E. Tilton and David J. Cook, in virtue of the execution and order of sale of the lots or parcels of land purchased and owned by your orators and the said John G. Jager, and herein set forth and men-
251 tioned, to wit, lots 5 & 6, in block 94; lots 11, 12, 29, & 30, in block 78; lots 15 & 16, in block 62; lots 13 & 14, in block 129; lots 25 & 26, in block 209; lots 11 & 12, in block 194; lots 21 & 22, in block 175; lots 27 & 28, in block 159; lots 7 & 8, in block 6; lot 31, in block 127; and lots 5 & 6, in block 137, situate in the east division of the city of Denver, in the county of Arapahoe and Territory of Colorado; and also lots 7 & 8, in block 63; and lot 4, in block 41, in the west division of the city of Denver aforesaid, may be adjudged and decreed to be set aside and forever declared null and void, and particularly that the deed of conveyance, executed and delivered to the said defendants Alfred E. and Charles E. Tilton, by the said defendant David J. Cook, on the 13th day of December, A. D. 1871, conveying the said lots or parcels of land in pursuance to the said sale made on the 13th of March, 1871, may be adjudged and decreed to be cancelled and set aside and forever declared to be null and void.

To the end therefore that the said Alfred E. Tilton and Charles E. Tilton and David J. Cook, Judson H. Dudley, and John Alexander, may answer the matters hereinbefore charged by way of supplement, but not upon oath, their oath being hereby waived, and that your orators may have such other and further relief against the said defendants as to your honor may seem meet and agreeable to equity and good conscience:

May it please your honor to grant unto your orators a writ of
252 summons in chancery, directed to the coroner of Arapahoe County, Territory of Colorado, the said defendant David J. Cook being sheriff of said county of Arapahoe, commanding him to summon the defendants Alfred E. Tilton and Charles E. Tilton, David J. Cook, and Judson H. Dudley, and John Alexander, to be and appear before this honorable court at the April term thereof, A. D. 1873, and then and there to answer the matters and things in this supplemental bill of com-

plaint contained, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

JOSEPH B. COFIELD,
DANIEL WITTER,
RICHARD E. WHITSITT,
JOHN ROCHE,
ERASTUS F. HALLECK,
CHARLES HALLECK &
AMOS STECK,
By E. L. SMITH AND AMOS STECK.
Their Solicitors.

E. L. SMITH and AMOS STECK,
Of Counsel for Complainants.

TERRITORY OF COLORADO,
Arapahoe County, ss:

The people of the Territory of Colorado to the sheriff of Arapahoe County, greeting:

We command you that of the lands and tenements, goods and
253 chattels, and chattels real of Judson H. Dudley, defendant, in your county, you cause to be made the sum of five thousand six hundred and forty-two dollars and eighty cents, which Alfred E. Tilton and Charles E. Tilton, partners as A. E. & C. E. Tilton, plaintiffs lately in the district court of said county, at a term thereof begun and held at Denver, in said county, on the fifth day of October last past, recovered against the said defendant, and which by the said court was adjudged to the said plaintiffs for their damages by them in this behalf sustained. And, also, the further sum of twenty-nine dollars and fifty cents, which were adjudged to the said plaintiffs for their costs and charges in that behalf expended, included in the annexed fee-bill, whereof the said defendant are convict, as appears to us of record. And have you these moneys ready to render to the said plaintiffs for their damages and costs aforesaid, and make a return of this writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date thereof.

Witness, Oliver A. Whittemore, clerk of the said court, and the seal thereof, at Denver, in said county, this seventeenth day of November, A. D. 1869.

[SEAL.] OLIVER A. WHITTEMORE, *Clerk.*

Whole No. 1432. Term No. 4. Ex. No. record-book 4, page 341; fee-book 2, page 350.

254 TERRITORY OF COLORADO,
Arapahoe County, ss:

IN THE MATTER OF ALFRED E. TILTON AND Charles E. Tilton
versus
JUDSON H. DUDLEY, IMPLEADED WITH THOMAS P. Ames.

Plaintiffs' costs.

Clerk's fees.....
App. of atty., 25c.; filing papers, each 15c., 20, 3.00; bond for costs..... 3 25

Ent. suit on dock., 25; ent. ord., 75c. each, 14	10 75	
Swearing to aff't, 35c., 25, 8.75; ent. fin. judg't, 75c.; assess. dam., 1.00	10 50	
Issuing ex., $1.50; dock. same, 25c.; ent. sheriff's return on same, 25c. per folio	3 75	
Ent. satis. on same, 25c.; fee bill, $1.00	1 25	
		29 50

Jury fee.....
Sheriff's fees.....

I, Oliver A. Whittemore, clerk of the district court of said county of Arapahoe, do hereby certify that the above is a true copy from my fee-book of plaintiffs' costs.

Given under my hand and seal of said court.

[SEAL.] OLIVER A. WHITTEMORE, *Clerk.*

255 (Indorsed:) October term, A. D. 1869. Execution, fi. fa., and fee bill. District court. Fee-book 2, page 350; record 5, page 341; whole No. 1432. Term No. 4. Execution No . A. E. & C. E. Tilton vs. Judson H. Dudley. Debt, $; damages, 5,642.80; costs, $29.50—total amount, $5,672.30. The sheriff will collect interest from first day of November, 1869. Oliver A. Whittemore, clerk.

Sheriff's fees: levying execution, $; advertising property, $; miles traveled, $; commission on $; returning execution, $; certificate of purchase, $; total, $. Filed this 4th day of March, A. D. 1871. O. A. Whittemore, clerk. Rec'd this execution Nov. 17th, A. D. 1869, at 10 o'clock a. m. D. J. Cook, sheriff.

EXHIBIT A.

The sheriff will proceed and sell the property attached, to wit: Lots five and six, in block ninety-four; eleven and twelve, in block seventy-eight; lots fifteen and sixteen, in block sixty-two; lots thirteen & fourteen, in block one hundred and twenty-nine; lots twenty-five and twenty-six, in block two hundred and nine; lots eleven and twelve, in block one hundred and ninety-four; lots twenty-one and twenty-two, in block one hundred and seventy-five; lots twenty-seven and twenty-eight, in block one hundred and fifty-nine; lots five and six, in block one hundred and thirty-seven; lots seventeen and eighteen, in block eleven; lots seven and eight, in block six; lot thirty-one, in block one hundred and twenty-seven, in east division of Denver City; also, lot seven, in block sixty-three; lot four, in block forty-one; lot eight, in block sixty-five; lot two, in block forty; l't eight, in block sixty-three, in the west division of the city of Denver, all in the county of Arapahoe, and Territory of Colorado.

OLIVER A. WHITTEMORE,
Clerk.

256 TERRITORY OF COLORADO,
County of Arapahoe, ss:

I have duly executed the within by levying upon the following described real estate as the property of Judson H. Dudley, to wit: Lots 5, and 6, in block 94; lots 11 and twelve, (12,) in block seventy-eight, (78;) lots twenty-nine, (29,) and thirty, (30,) in block seventy-eight, (78;) lots fifteen (15) and sixteen, (16,) in block sixty-two, (62;) lots thirteen

(13) and fourteen, (14,) in block one hundred and twenty-nine, (129;) lots twenty-five (25) and twenty-six, (26), in block two hundred and nine, (209;) lots eleven (11) and twelve, (12,) in block one hundred and ninety-four, (194;) lots twenty-one (21) and twenty-two, (22,) in block one hundred and seventy-five, (175;) lots twenty-seven (27) and twenty-eight, (28,) in block one hundred and fifty-nine, (159;) lots five (5) and six, (6,) in block one hundred and thirty-seven, (137;) lots seventeen (17) and eighteen, (18,) in block eleven, (11;) lots seven (7) and eight, (8,) in block six, (6;) lots thirty-one, (31,) in block one hundred and twenty-seven, (127,) in the east division of he city of Denver. Also lot seven, (7,) in block sixty-three, (63;) lot four, (4,) in block forty-one, (41;) lot eight, (8,) in block sixty-five, (65;) lot two, in block, (40;) lot eight, in block sixty-three, (63;) in the west division of the city of Denver; all of said lots in the county of Arapahoe and Territory of Colorado, together with all and singular the appurtenances thereunto belonging, this 19th
257 day of November, A. D. 1869, which said property I caused to be advertised for sale at public vendue, for the space of twenty days, to wit, from the 18th day of February, A. D. 1871, to the 13th day of March, A. D. 1871, at the expiration of which time I proceeded to sell and did sell the same at the front door of the court-house, in the city of Denver, in the county and Territory aforesaid, and at the hour of ten o'clock of said 13th day of March, A. D. 1871, to Alfred E. Tilton and Charles E. Tilton, for the sum of sixty-six hundred and seventy-five dollars, they being the highest and best bidders therefor, of which amount I paid to A. E. & C. E. Tilton, sixty-three hundred and forty-five dollars and twenty-five cents, and the Daily Rocky Mountain News, fifty-seven dollars, to O. A. Whittemore, clerk, twenty-nine $\frac{50}{100}$ dollars. The balance of one hundred and forty-two and $\frac{25}{100}$ dollars, I retain as my fees this 13th day of March, A. D. 1871.

D. J. COOK,
Sheriff of Arapahoe County.

Attached to the above return is the following:

Received from D. J. Cook, sheriff, six thousand three hundred and forty-five and $\frac{25}{100}$ dollars, (6,345.25,) amount of judgment and interest against Judson H. Dudley.

A. E. & C. E. TILTON,
By A. K. TILTON, *Agent.*

(Indorsed:) 1773. Joseph B. Cofield and others vs. Alfred E. Tilton and others. Supplemental bill. Filed Jan'y 18th, A. D. 1873. Geo. H. Mills, clerk.

258 And afterwards, to wit, on the 7th day of October, A. D. 1873, the same being one of the regular juridical days of the October term, A. D. 1873, of said court, the following further proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD ET AL.
vs.
A. E. TILTON ET AL. } In chancery.

Now on this day come the said plaintiffs by E. L. Smith, esq., Alfred Sayre, esq., and C. W. Wright, esq., their attorneys, and the said A. E. Tilton, C. E. Tilton, and David J. Cook, by John Q. Charles, esq., and A. C. Phelps, esq., their attorneys, also come; and there-

upon it is ordered by the court that the said defendants plead, answer, or demur to the supplemental bill of complaint herein, by or before the first (1st) day of November next.

And afterwards, to wit, on the 1st day of November, A. D. 1873, came the said defendants, A. E. & C. E. Tilton and D. J. Cook, by their solicitors, and filed in said court their answer to the supplemental bill of complaint herein, in pursuance of the order of said court heretofore made in this behalf, which said answer is in words and figures as follows, to wit:

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260 TERRITORY OF COLORADO,
County of Arapahoe, ss:

In the district court of the first judicial district of Colorado Territory, within and for the county aforesaid, of the October term thereof, A. D. 1873.

ALFRED E. TILTON ET ALS.
ats.
JOSEPH B. COFIELD ET AL. } In chancery.

The joint and several answer of the defendants, Alfred E. Tilton, Charles E. Tilton, and David J. Cook, defendants, to the supplemental bill of complaint of the said Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, John Roche, Erastus F. Halleck, Charles Halleck, and Amos Steck, filed in said cause on the 18th day of January, A. D. 1873.

The said defendants, Alfred E. Tilton, Charles E. Tilton, and David J. Cook, severally answering, say they believe it to be true that at or about the time in said supplemental bill stated, the said complainants exhibited their original bill of complaint in this honorable court against such parties as defendants thereto as in the said supplemental bill mentioned, thereby stating and praying to the effect in said supplemental bill set forth, so far as the same is therein set forth, and that the said defendants Alfred E. Tilton and Charles E. Tilton appeared and put
261 in their answer to said amended original bill of complaint, and that such proceedings have since been had in the said cause as in said supplemental bill of complaint mentioned; but for their greater certainty, nevertheless, these defendants crave leave to refer to the said amended original bill of complaint, the answer of the said defendants Alfred E. and Charles E. Tilton, and other proceedings now remaining filed as of record in said cause in this honorable court; and these defendants, further severally answering, say they admit that after the filing of said original bill that a temporary writ of injunction was issued by said court restraining these defendants from selling said lots or parcels of land as alleged in said supplemental bill.

These defendants, further answering, admit that afterwards answers were filed in said cause by said Alfred E. and Charles E. Tilton and the said Dudley, and that defaults were entered against the said Alexander and Cook for failing to plead or answer said original bill of complaint.

The defendants, further answering, admit that the said complainants filed their replication to said answers, and that the cause was thereafter referred to the said Elvans as alleged in said supplemental bill.

These defendants further answering, admit that proof was taken before the said Elvans as master upon the issues in said cause, and that the said Elvans thereafter filed his report of the testimony
262 so taken by him in said cause as alleged in said supplemental bill.

These defendants, further answering, admit the issuing of said execution, its levy upon said lots or parcels of land, the advertisement of said lots or parcels of land by said sheriff for sale, the postponement of said sale from time to time, and the subsequent sale of said lots as alleged in said supplemental bill to the said Alfred E. and Charles E. Tilton.

These defendants, further answering, admit that a temporary injunction was ordered to be issued by the Hon. C. S. Eyster, then judge of said court, restraining the said Alfred E. and Charles E. Tilton and the said David J. Cook from selling said lots or parcels of land, which was duly served on these defendants, & the said sale was thereafter postponed from time to time, as stated in said supplemental bill, and that afterwards said injunction was dissolved by said court on the 13th day of January, A. D. 1871, prior to the sale of said lots, on certain conditions, as stated in said order dissolving said temporary injunction, which said conditions were not complied with by said complainants, as averred in said supplemental bill.

These defendants, further answering, state the fact to be true that the conditions to said order dissolving said temporary injunction was that said injunction be dissolved unless the said complainants, within
263 thirty days from the date of said order, pay to the said A. E. and C. E. Tilton the sum of two thousand six hundred and seventy dollars and eighty cents, the amount sworn to be due in the affidavits originally filed in said attachment suit, which said conditions was not complied with by said complainants, as stated in said supplemental bill.

These defendants, further answering, admit that the said defendant, David J. Cook, as sheriff of said Arapahoe County, executed and delivered to the said Alfred E. and Charles E. Tilton a deed of conveyance for said lots or parcels of land so sold by him under said execution, in pursuance of the statute in such cases made and provided, as alleged in said supplemental bill.

These defendants, further answering, deny that the said complainants were ever the owners of said lots or parcels of land as alleged in said supplemental bill of complaint, and aver the fact to be true that by virtue of the said sale of said lots by said sheriff under said execution and said deed of conveyance made by said sheriff in pursuance of said sale; that the said defendants, Alfred E. and Charles E. Tilton thereby became the owners of said lots and parcels of land and entitled to enjoy and possess the same. And these defendants, further answering, deny that the said complainants are entitled to any relief against the
264 acts of the said defendants Alfred E. and Charles E. Tilton and David J. Cook, for selling said lots or parcels of land under and by virtue of said execution, as charged in said supplemental bill.

And these defendants deny all and all manner of unlawful combinations and confederacy wherewith they are by said supplemental bill charged, without this, that there is any other matter, cause or thing in the said complainants' said supplemental bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ALFRED E. TILTON,
CHARLES E. TILTON,
DAVID J. COOK,
By CHARLES & PHELPS.
Their Attys.

CHARLES & PHELPS,
Solicitors for said Defendants.

265 (Endorsed:) 1773, J. B. Cofield et al. vs. A. E. Tilton et al. Answer of A. E. & C. E. Tilton & David J. Cook, to supplemental bill. Filed Nov. 1st., 1873. Geo. H. Mills, clerk, Charles & Phelps, for defts.

266 And afterwards, to wit, on the 17th day of November, A. D. 1873, the same being one of the regular juridical days of the October term, A. D. 1873, of said court, the following other proceedings were had, and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD ET AL.
vs.
A. E. AND C. E. TILTON. } Chancery.

Now on this day come the said parties by their solicitors, respectively, and thereupon, by agreement of the said , here in open court, it is ordered by the court that this cause be set down for final hearing upon the bill and exhibits, the proofs taken in this cause, the supplemental bill herein, and the answer of the defendants.

And afterwards, and on the 16th day of December, A. D. 1873, it still being of the October term, A. D. 1873, of said court, the following further proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD ET AL.
vs.
A. E. TILTON ET AL. } In chancery.

Now on this day come the said complainants, by E. L. Smith, esq., Alfred Sayre, esq., and Amos Steck, esq., their solicitors, and the
267 said defendants, A. E. Tilton, C. E. Tilton, and David J. Cook, by John Q. Charles, esq., and A. C. Phelps, esq., their solicitors, also come, and thereupon the said defendants David J. Cook and John Alexander, still failing to plead, answer, or demur to the amended bill of complaint herein, it is ordered and adjudged, by the court, that as to the said David J. Cook and John Alexander the said amended bill of complaint be taken as confessed.

And the said Judson H. Dudley and John Alexander, still failing to plead, answer, or demur to the supplemental bill of complaint of the complainants herein, it is ordered and adjudged by the court that the said supplemental bill of complaint herein be taken for confessed as against the said Judson H. Dudley and the said John Alexander.

And afterwards, and on the same day, to wit, the 16th day of Decem-

ber, A. D. 1873, it still being of the October term, A. D. 1873, of said court, the following further proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH B. COFIELD, DANIEL WITTER, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Halleck, and Charles Halleck, complainants,
versus
ALFRED E. TILTON, CHARLES E. TILTON, David J. Cook, Judson H. Dudley, and John Alexander, defendants.
} In chancery.

268 This cause having this day been brought on to be heard upon the amended bill of complaint of the complainants, taken for confessed as against the said defendants John Alexander and David J. Cook, and the joint and several answers of the defendants Alfred E. Tilton and Charles E. Tilton, and the separate answer of the said defendant Judson H. Dudley thereunto, and also upon the replication of the said complainants to the answer of the said defendants Alfred E. Tilton and Charles E. Tilton, and also upon the supplemental bill of complaint of the said complainants, with the leave of the court filed therein, taken for confessed as against the said Judson H. Dudley and John Alexander, as well as the answers of the said defendants Alfred E. Tilton, Charles E. Tilton, and David J. Cook, late sheriff of Arapahoe County, to the said supplemental bill, and also upon the report of the master and all the proofs taken therein; and the said pleadings and proofs having been read, Messrs. E. L. Smith, W. C. Kingsley, and Sayre, of counsel for the complainants, and Messrs. Charles & Phelps, of counsel for the defendants Alfred E. Tilton, Charles E. Tilton, and David J. Cook, no counsel appearing for the defendants Judson H. Dudley and John Alexander, having been heard, and the court having fully and duly considered the said master's report, and all the said pleadings, proofs, and arguments submitted, it is, therefore, or-
269 dered, adjudged, and decreed by the court that all proceedings had and taken by the said defendants Alfred E. Tilton and Charles E. Tilton, by their attorneys, or by David J. Cook, defendant and sheriff of the county of Arapahoe and Territory of Colorado, in virtue of an execution and order of sale issued out of *of* the district court of the Territory of Colorado for the first judicial district, and for the county of Arapahoe, on the 17th day of November, A. D. 1869, upon a judgment confessed by the said defendant, Judson H. Dudley, in an action at law and proceedings in attachment, wherein the said defendants Alfred E. Tilton and Charles E. Tilton were plaintiffs, and the said Judson H. Dudley was defendant, and rendered by the said district court on the first day of November, A. D. 1868, in behalf of the said defendants Alfred E. Tilton and Charles E. Tilton, and against the said Judson H. Dudley, for the sum of five thousand six hundred and forty-two $\frac{80}{100}$ dollars damages, and twenty-nine $\frac{50}{100}$ dollars costs of suit, so far as the said execution and order of sale and proceeding thereon by the said defendant David J. Cook, sheriff as aforesaid, relates to the sale of the following described lots or parcels of land lying, being, and situate within the city of Denver, in the county of Arapahoe, and Territory of Colorado, more particularly described as follows, to wit: Lots numbered five (5) and six, (6,) in block numbered ninety-four, (94;) lots No. eleven (11) and twelve, (12,) twenty-
270 nine (29) and thirty, (30,) in block No. seventy-eight, (78;)

lots No. fifteen (15) and sixteen, (16,) in block sixty-two, (62;) lots No. thirteen (13) and fourteen, (14,) in block No. one hundred and twenty-nine, (129;) twenty-five (25) and twenty-six, (26,) in block No. two hundred and nine, (209;) lots eleven (11) and twelve, (12,) in block one hundred and ninety-four, (194;) lots No. twenty-one (21) and twenty-two, (22.) in block No. one hundred and seventy-five, (175;) lots twenty-seven (27) and twenty-eight, (28,) in block No. one hundred and fifty-nine, (159;) lots No. seven (7) and eight, (8,) in block No. six, (6;) lots No. five (5) and six, (6,) in block No. one hundred and thirty-seven, (137;) and lot No. thirty-one, (31,) in block No. one hundred and twenty-seven, (127;) all lying and being in the east division of the said city of Denver; and also lots No. seven (7) and eight, (8,) in block No. sixty-three, (63,) and lot No. four, (4,) in block No. forty-one, (41,) lying and being situate in the west division of the city of Denver aforesaid, be, and the same are hereby, set aside and declared to be null and void, and of none effect whatever, and particularly that the sale of the lots, or parcels of land mentioned and described herein, made by the said defendant, David J. Cook, sheriff as aforesaid, on the 13th day of March, A. D. 1871, to the defendants Alfred E. Tilton and Charles E. Tilton, in virtue of the execution and order of sale aforesaid be, and the same is hereby, adjudged, decreed, and declared to be null and void, and of none effect whatever.

271 And it is further ordered, adjudged, and decreed that the deed of conveyance of said lots or parcels of land mentioned and described in the complainants' bill of complaint, and also herein, made and executed by the said defendant, David J. Cook, as sheriff, on the 13th day of December, A. D. 1871, in pursuance of said sale, made on the 13th day of March, A. D. 1871, to the said defendants Alfred E. Tilton and Charles E. Tilton, in so far or in so much as the same relates, refers to, concerns or conveys, or was intended to convey, the said lots or parcels of land mentioned and described herein be, and the same is hereby, cancelled, set aside, and declared to be null and void.

And it is further ordered, adjudged, and decreed that so much of the said judgment recovered by the said defendants Alfred E. Tilton and Charles E. Tilton, in the district court of the Territory of Colorado, within and for the county of Arapahoe, within the first judicial district, against the said defendant Judson H. Dudley, on the first day of November, A. D. 1868, for the sum of five thousand six hundred and forty-two $\frac{80}{100}$ dollars, and the costs of suit, as provides for issuing of the execution and order of sale of the said lots or parcels of land herein described, be, and the same is, forever vacated and declared to be null and void.

And it is further ordered, adjudged, and decreed that each and every of said lots or parcels of land mentioned and described herein be, and the same are hereby, released and discharged and forever free and clear from the lien of the said judgment, recovered against the

272 said defendant Judson H. Dudley by the said defendants Alfred E. Tilton and Charles E. Tilton, on the first day of November, A. D. 1868, for the sum of five thousand six hundred and forty-two dollars and eighty cents and costs of suit.

And it is further ordered, adjudged, and decreed that a perpetual injunction shall issue under the seal of this court to restrain the said defendants Alfred E. Tilton and Charles E. Tilton, or either of them, their counsellors, attornies, or agents, forever, from selling the said herein mentioned and described lots or parcels of land, or any or either of them, either by any proceeding to be had or taken upon said judgment

recovered against the said defendant Dudley, or from selling or disposing of the said lots or parcels of land, to any person or persons whomsoever, or from mortgaging them, or any of them, or entering into any contract to sell or dispose of them in any manner whatever.

And it is further ordered, adjudged, and decreed that the said complainants have and recover from the said defendants Alfred E. Tilton and Charles E. Tilton their costs in this cause expended, and that said defendants Alfred E. Tilton and Charles E. Tilton pay all the costs of the proceedings in this cause to be taxed by the clerk.

And afterwards, and on the same day, to wit, the 16th day of January, A. D. 1873, it still being of the October term, A. D. 1873, of said
273 court, the following further proceedings were had and entered of record in said court, in said cause, to wit:

JOSEPH B. COFIELD ET AL. }
vs. } Chancery.
ALFRED E. TILTON ET AL. }

Now, on this day come the said defendants, Alfred E. Tilton and Charles E. Tilton, by John Q. Charles, esq., and A. C. Phelps, esq., their solicitors, and pray an appeal from the judgment and decree of the court herein to the supreme court of this Territory, which is allowed to them on condition, nevertheless, that within twenty (20) days from this date they file herein a good and sufficient appeal bond, in the penalty of two thousand (2,000) dollars, conditioned as required by law, and with sureties to be approved by the clerk of this court

And afterwards, to wit, on the 26th day of December, A. D. 1873, the same being one of the regular juridical days of the October term, A. D. 1873, of said court, the following further proceedings were had and entered of record in said court, in said cause, to wit:

JOSEPH B. COFIELD ET AL. }
vs. } Chancery.
A. E. TILTON ET AL. }

Now, on this day come the said parties by their solicitors re-
274, 275 spectively, and thereupon, on motion of the said defendants, Alfred E. Tilton and Charles E. Tilton, it is ordered by the court that the time heretofore given the said defendants in which to file their appeal bond herein extended until the tenth day of January next.

And afterwards, to wit, on the 30th day of December, A. D. 1873, came, the said defendants, Alfred E. Tilton and Charles E. Tilton, by by their solicitors, and filed in said court their appeal-bond in this behalf, together with a certain power of attorney authorizing the execution of the said bond, which said appeal-bond is in words and figures as follows, to wit:

276 Know all men by these presents that we, Alfred E. Tilton and Charles E. Tilton, as principals, and Albert K. Tilton and Cyrus Eaton, as sureties, are held and firmly bound unto Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Halleck, and Charles Halleck, in the penal sum of two thousand dollars, lawful money of the United States of America, for the payment of which well and truly to be made we bind ourselves, our heirs, executors,

or administrators, jointly and severally, firmly by these presents, sealed with our seals on this thirtieth day of December, A. D. 1873.

The condition of the above obligation is such that whereas a decree in chancery was rendered and entered of record in favor of the said Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Halleck, and Charles Halleck, on the sixteenth day of December, A. D. 1873, against the above-bounden Alfred E. Tilton and Charles E. Tilton, impleaded with one Judson H. Dudley, David J. Cook, and John Alexander, in a certain suit then pending in the district court of the first judicial district of Colorado Territory, sitting within and for the county of Arapahoe, on the chancery side of the docket of said court, said day being one of the days of the October term of said court, A. D. 1873, from which said decree the above-bounden Alfred E. Tilton and Charles E. Tilton, then and there prayed an appeal to the supreme court of Colorado Territory, which said appeal
277 was allowed on condition that the said Alfred E. Tilton and Charles E. Tilton, enter into a good and sufficient bond in the sum of two thousand dollars.

Now, therefore, if the said Alfred E. Tilton and Charles E. Tilton shall duly prosecute their said appeal, and pay said judgment or decree, costs of suit, interest, and damages, in case said decree shall be affirmed by said supreme court of Colorado Territory, then this obligation is to be null and void; otherwise to remain in full force and effect.

ALFRED E. TILTON, [L. S.]
By his attorney in fact, ALBERT K. TILTON. [L. S.]
CHARLES E. TILTON, [L. S.]
By ALBERT K. TILTON, [L. S.]
His Attorney in fact.
ALBERT K. TILTON. [L. S.]
CYRUS EATON. [L. S.]

In presence of—
J. Q. CHARLES.

(Endorsed:) 1773. Joseph B. Cofield et al. vs. A. E. & C. E. Tilton et al. Appeal bond. Approved & filed December 30th, 1873. George H. Mills, clerk.

And the said power of attorney filed with the said appeal-bond is in words and figures as follows, to wit:

Know all men by these presents that Alfred E. Tilton and Charles E. Tilton, of the city and State of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint,
278 Albert K. Tilton, of the city of Denver, Colorado Territory, our true and lawful attorney, for us, and in our names, place, and stead, to execute any bond or bonds, and all other necessary papers which may be required or deemed needful for the purpose of removing by appeal or writ of error from the district court of the first judicial district of Colorado Territory, within and for the county of Arapahoe, to the supreme court of said Territory of Colorado, a certain cause heretofore depending in said district court, on the chancery side thereof, wherein Joseph B. Cofield et al. were complainants, and the said Alfred E. Tilton and Charles E. Tilton et al. were defendants, and to execute any bond or bonds or other papers, which may be needful to obtain a supersedeas in case said cause should be removed by writ of error, and to do any and all acts which may be or become necessary to be done to

take said cause by writ of error or appeal to said supreme court, and obtain or procure a stay proceedings under the decree now rendered in said cause, giving and granting unto him, our said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as we ourselves might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that he, our said attorney or his substitute, shall lawfully do or cause to be done by virtue thereof.

279 In witness whereof we have hereunto set our hands and seals the twenty-second day of December, one thousand eight hundred and seventy-three.

ALFRED E. TILTON. [SEAL.]
CHARLES E. TILTON. [SEAL.]

Sealed and delivered in presence of—
WILLIAM H. CLARKSON.
CHARLES EDGAR MILLS.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 22nd day of December, A. D. 1873, before me, William H. Clarkson, a commissioner of the Territory of Colorado in and for the State of New York, residing in said city of New York, personally appeared Alfred E. Tilton and Charles E. Tilton, personally known to me to be the same persons described in and who executed the foregoing instrument as parties thereto, who acknowledged to me that they had executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed,

In witness whereof I have hereunto set my hand and affixed my official seal this *this* 22nd day of December, A. D. 1873.

WILLIAM H. CLARKSON,
Commissioner for Colorado in New York,
117 *Broadway, N. Y. City.*

(Endorsed:) 1773. Power of attorney. A. E. & C. E. Tilton to Albert K. Tilton. Filed in district court December 30th, 1873. George H. Mills, clerk.

280 TERRITORY OF COLORADO,
County of Arapahoe, ss;

I, George H. Mills, clerk of the district court of the first judicial district of the Territory of Colorado, within and for the county of Arapahoe, hereby certify the above and foregoing to be a true, correct, and complete transcript and copy, first, of the original bill filed in said cause and exhibits thereto annexed; second, the original chancery process issued in said cause, being two summons, and the returns endorsed thereon, of service and the notice of publication therein; third, the demurrer of defendants, A. E. & C. E. *E.* Tilton, to the original bill; fourth, the amended bill of complaint and order of court allowing same to be filed; fifth, the answers of defendants A. E. and C. E. Tilton, to the amended bill filed in said cause; sixth, the answer of defendant Dudley filed in said cause; seventh, the exceptions of complainants to the answer of defendant' A. E. & C. E. Tilton, and orders of court disposing of the same; eighth, the replication of complainants to the answer of defendants A. E. & C. E. Tilton; ninth, the master's report of evidence with copies

of exhibits therein contained; tenth, the supplemental bill and order of court for leave to file the same; eleventh, the answer of A. E. & C. E. Tilton and D. J. Cook to supplemental bill; twelfth, the several orders of court, such as defaults of defendants and other material
281 orders relating to the disposition and disposal of matters in connection with the proceedings aforesaid; thirteenth, the final decree, order of court, allowing appeal on behalf of defendants A. E. & C. E. Tilton, appeal bond and power of attorney filed therewith, in a certain cause lately pending in said court, wherein Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, John Roche, Erastus F. Halleck, Charles Halleck, and Amos Steck were complainants, and Alfred E. Tilton, Charles E. Tilton, Judson H. Dudley, David J. Cook, and John Alexander were defendants, as the same appear from the files and records in my office.

{ DISTRICT COURT SEAL ARAPAHOE CO., COLORADO. } In witness whereof I have hereunto subscribed my name and affixed the seal of said court at my office in Denver, this 21st day of January, A. D. 1874.

GEORGE H. MILLS, *Clerk.*

Fees for this transcript, 608 folios @ 20 c., $121.60; certif. & seal $1.00—$122.60.

282 To which said certified transcript of record was attached the following assignment of errors by attornies for appellants, which is in words and figures as follows, to wit:

Assignment of errors.

In the supreme court of *of* Colorado Territory, of the February term thereof, A. D. 1874.

ALFRED E. TILTON AND CHARLES E. TILTON, impleaded with David J. Cook, Judson H. Dudley, and John Alexander, appellants,
vs.
JOSEPH B. COFIELD, DANIEL WITTER, Richard E. Whitsitt, Erastus F. Halleck, Charles Halleck, and John Roche, appellees.

And now comes the said Alfred E. and Charles E. Tilton, the appellants, by Charles & Phelps, their attorneys, and say that, in the record and proceedings aforesaid, there is manifest error in this, to wit:

First. The court erred in rendering the decree in this cause in favor of the complainants, the evidence being insufficient to sustain the
283 case presented by complainants in their said bill and supplemental bill.

Second. The court erred in not rendering a decree in favor of the defendants, dismissing the said bill, there being no case or equity presented by said bill, or by said supplemental bill.

Third. The court erred in rendering said decree vacating the lien of said judgment on said lots of land attached in said suit of A. E. & C. E. Tilton vs. said Dudley & Ames, and in setting aside that portion of said judgment awarding said execution and order of sale of said lots, so attached in said suit, and declaring the same to be null and void, also in setting aside said sale and *and* deed made by the said sheriff there-

under & declaring said sale and deed to be null and void, there being no case presented by said bill and supplemental bill or the evidence to warrant such decree.

Fourth. The court erred in rendering said decree, because the court had no jurisdiction of the subject-matter of the case presented by said bill and supplemental bill, or of the person of all the defendants.

Fifth. The court erred in rendering a decree in favor of said complainants, there being no evidence showing or tending to show that
284 said complainants had any right or title to the lots in question as alleged in said bill and supplemental bill.

By reason whereof said appellants pray that said judgment may be reversed, &c.

CHARLES & PHELPS,
Attys. for Appellants.

Which said transcript & assignment of errors is endorsed as follows: No. 138. Supreme Court. A. E. & C. E. Tilton, appellants, vs. Joseph B. Cofield et als., appellees. Transcript of record & assignment of errors. Filed February 11th, 1874. John W. Webster, clerk.

And afterwards, to wit, on the nineteenth day of February, A. D. 1874, the same being one of the regular juridical days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following proceedings were had and entered of record in said court in said cause, to wit:

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ALFRED E. TILTON & CHARLES E. TILTON, impleaded with David J. Cook, Judson H. Dudley, & John H. Alexander, appellants, *vs.* JOSEPH B. COFIELD, DANIEL WITTER, Richard E. Whitsitt, Amos Steck, Erastus F. Hallack, Charles Hallack, & John Roche, appellees.	No. 138. Appeal from district court Arapahoe County.

At this day come the said appellants by J. Q. Charles, their solicitor, and this cause coming on to be heard upon the motion of said appellants, it is ordered by the court that this cause be set for hearing on Monday, the second day of March next ensuing this day.

And afterwards, to wit, on the twenty-seventh day of February, A. D. 1874, came the said appellees by Amos Steck, their solicitor, and filed in the said supreme court their joinder in error in this cause, which said joinder in error is in words and figures as follows, to wit:

286 In the supreme court of Colorado Territory, at February term, 1874.

ALFRED E. TILTON AND CHARLES E. TILTON, appellants, *vs.* JOSEPH B. COFIELD, DANIEL WITTER, AND others, appellees.	Appeal in chancery.

Now comes the said appellees, by Amos Steck, their solicitor, and

say that there is no error in the record and proceedings aforesaid on in rendering the decree aforesaid, in manner and form as assigned by appellants. Whereupon they pray that the said decree may be affirmed, and that their costs may be adjudged to them, &c.

AMOS STECK,
Solicitor for Appellees.

(Endorsed:) 138. A. E. & C. E. Tilton, appellants, vs. J. B. Cofield and others, appellees. Joinder in error. Filed February 27th, 1874. John W. Webster, clerk. Amos Steck, for appellees.

287 And afterwards, to wit, on the second day of March, A. D. 1874, the same being one of the regular juridical days of the February term, A. D. 1874, of said supreme court, the following other proceedings were had and entered of record in said court in said cause, to wit:

ALFRED E. TILTON & CHARLES E. TILTON, impleaded with David J. Cook, Judson H. Dudley, and John H. Alexander, appellants,
vs.
JOSEPH B. COFIELD, DANIEL WITTER, RICHARD E. Whitsitt, Amos Steck, Erastus Hallack, Charles Hallack, and John Roche, appellees.

No. 138. Appeal from district court Arapahoe County.

At this day come the said appellants, by Messrs. Charles & Phelps, their solicitors; and the said appellees by Amos Steck, pro se, and E. L. Smith, esq., their solicitors, also come. And this cause coming on to be heard, was submitted to the consideration and judgment of the court by said appellants. And it is ordered by the court that said appellees file their arguments herein by Thursday the twelfth day of March next ensuing.

288 And afterwards, to wit, on the eighteenth day of March, A. D. 1874, the same still being of the February term, A. D. 1874, of said supreme court, the following other proceedings were had and entered of record in said court in said cause, to wit:

ALFRED E. TILTON AND CHARLES E. TILTON, impleaded with David J. Cook, Judson H. Dudley, and John H. Alexander, appellants,
vs.
JOSEPH B. COFIELD, DANIEL WITTER, RICHARD E. Whitsitt, Amos Steck, Erastus F. Hallack, Charles Hallack, and John Roche, appellees.

No. 138. Appeal from district court Arapahoe County.

At this day come the said appellants, by Messrs. Charles & Phelps, their solicitors; and the said appellees by Amos Steck, esq., pro se, and E. L. Smith, esq., their solicitors, also come. And this cause coming on to be heard, was submitted to the consideration and judgment of the court and judgment thereon is reserved until another day.

289 And afterwards, to wit, on the tenth day of July, A. D. 1874, the same still being one of the regular juridical days of the Febru-

ary term, A. D. 1874, of said supreme court, the following proceedings were had and entered of record in said court in said cause, to wit:

ALFRED E. TILTON & CHARLES E. TILTON, impleaded with David J. Cook, Judson H. Dudley, & John H. Alexander, appellants,
vs.
JOSEPH B. COFIELD, DANIEL WITTER, RICHARD E. Whitsitt, Amos Steck, Erastus F. Hallack, Charles Hallack, and John Roche, appellees.

No. 138. Appeal from district court Arapahoe County.

On this day come the said appellants, by Messrs. Charles & Phelps, their solicitors; and the said appellees, by Messrs. Steck and E. L. Smith, their solicitors, also come. And thereupon this cause come to be heard as well upon the transcript of judgment and other proceedings had in this cause in the said district court for the county of Arapahoe as also upon the matters therein assigned for error. And the same having been argued by counsel, it appears to the court here, that there is no
290 error in the record and proceedings aforesaid, or in giving the decree aforesaid. On consideration whereof, it is ordered, adjudged, and decreed by the court that the judgment and decree of the district court in form aforesaid given, be in all things affirmed and stand in full force and effect. Justice Belford dissenting. That the opinions of the court filed herein be recorded, and that the said appellees recover of and from the said appellant their costs and charges in this behalf expended, and that they have execution therefor.

Whereupon come the said appellants, by their solicitors aforesaid, and pray an appeal from the judgment of this court in said cause to the Supreme Court of the United States; and thereupon it is ordered by the court that, upon said appellants filing herein their appeal-bond in the sum of five hundred dollars, conditioned according to law, within sixty days from this date, with sureties to be approved by one of the justices of this court, said appeal be allowed.

And afterwards, to wit, on the eleventh day of August, A. D. 1874, came the said appellants, Alfred E. Tilton and Charles E. Tilton,
291 by their solicitors, and filed in said Supreme Court their appeal-bond in this behalf, together with a certain power of attorney, authorizing the execution of the said bond, which said appeal-bond is in words and figures as follows, to wit:

Know all men by these presents that we, Alfred E. Tilton and Charles E. Tilton, who execute this bond, Albert K. Tilton, our attorney in fact, duly authorized hereto, and are held and firmly bound unto Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Hallack, and Charles Hallack, in the sum of five hundred dollars to be paid to the said Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Hallack, and Charles Hallack, their executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated at Denver, Colorado, this 8th day of August, A. D. 1874.

Whereas the above bounden Alfred E. Tilton and Charles E. Tilton, in a certain cause lately determined in the supreme court of Colo-
292 rado Territory, wherein they, the said Alfred E. Tilton and Charles E. Tilton were appellants, and the said Joseph B. Co-

field, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Hallack, and Charles Hallack were appellees, have prayed for and obtained and taken as appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the said supreme court of Colorado Territory.

Now, therefore, the condition of this obligation is such that if the above-named Alfred E. Tilton and Charles E. Tilton shall prosecute their said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALFRED E. TILTON,
By ALBERT K. TILTON, [SEAL.]
His Attorney in Fact.
CHARLES E. TILTON,
By ALBERT K. TILTON, [SEAL.]
His Attorney in Fact.
JASPER P. SEARS, JR.

Sealed and delivered in the presence of—
GEO. H. RAPLE.

TERRITORY OF COLORADO,
Arapahoe County, ss:

Jasper P. Sears, whose name is affixed to the foregoing bond, being duly sworn according to law, deposes and says that over and above all his indebtedness, he is possessed of property, real and personal, amounting to two thousand dollars.

JASPER P. SEARS, JR.

293 Sworn and subscribed to before me, Wm. M. Slaughter, a notary public within the county and Territory aforesaid, on this seventh day of August, A. D. 1874.

[NOTARIAL SEAL.] WM. M. SLAUGHTER,
Notary Public.

(Endorsed:) A. E. & C. E. Tilton to J. B. Cofield et als. Appeal bond. This bond approved this 8th day of August, 1874. James B. Belford, judge, &c. Filed August 11th, 1874. Jno. W. Webster, clerk.

And the said power of attorney, filed with the said appeal-bond, is in words and figures as follows, to wit:

Know all men by these presents that we, Alfred E. Tilton and Charles E. Tilton, of the city, county, and State of New York, reposing special trust and confidence in Albert K. Tilton, of the city of Denver, county of Arapahoe and Territory of Colorado, have made, constituted, and appointed, and by these present do hereby make, ordain, constitute, and appoint the said Albert K. Tilton our true and lawful attorney for us,
294 and in our names, place, and stead to remove, by appeal, writ of error, or otherwise, from the supreme court of Colorado Territory to the Supreme Court of the United States, a certain suit in chancery recently determined in the district court of the first judicial district of Colorado Territory sitting within and for the county of Arapahoe, and *by or* taken by appeal to said supreme court of Colorado Territory, wherein we, the said Alfred E. Tilton and Charles E. Tilton are appellants, and Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Hallack, and Charles Halleck are appel-

lees, when the said cause shall hereafter have been finally determined in said supreme court of Colorado Territory, and for us and in our name, place, and stead to make, execute, and deliver all necessary bonds and other papers with good and sufficient sureties thereto, which may be necessary and required to remove said cause to the Supreme Court of the United States, by appeal or otherwise, so that the same shall operate as a supersedeas if, in the discretion of our said attorney, after said cause has been decided by said supreme court of Colorado Territory, he shall deem it for our interest so to do; and for us and in our name to take and adopt all the necessary steps and measures requisite in
295 the premises to enable our said attorney to remove said cause by appeal, writ of error, or otherwise to the Supreme Court of the United States as aforesaid, after the same has been finally determined in said supreme court of Colorado, if, in the opinion of our said attorney, he shall deem it for our best interest so to do, hereby giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, in as free and ample manner, to all intents and purposes as we might or could ourselves do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute by him duly appointed to act *act* in the premises shall lawfully do or cause to be done in and about the premises by virtue hereof.

In witness whereof we have hereunto set our hands and seals this 5th day of January, A. D. 1874.

ALFRED E. TILTON. [SEAL.]
CHARLES E TILTON. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM H. CLARKSON.
CHARLES EDGAR MILLS.

296 STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 5th day of January, A. D. 1874, before me, William H. Clarkson, a commissioner of the Territory of Colorado, in and for the State of New York, residing in said city of New York, personally appeared Alfred E. Tilton and Charles E. Tilton, personally known to me to be the same persons described in and who executed the foregoing instrument as parties thereto, who acknowledged to me that they had executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed.

{SEAL AS COMMISSIONER OF COLORADO IN THE CITY OF NEW YORK.} In witness whereof I have hereunto set my hand and affixed my official seal this 5th day of January, A. D. 1874.

WILLIAM H. CLARKSON,
Commissioner for Colorado in New York, 117 Broadway, N. Y. City.

(Endorsed:) Power of attorney. A. E. & C. E. Tilton to A. K. Tilton. Filed August 11th, 1874. Jno. W. Webster, clerk.

297 And afterwards, to wit, on the same day, came the said appellants, Alfred E. Tilton and Charles E. Tilton, by their solicitors, and filed in said supreme court an affidavit of the value of property in

this cause, which said affidavit is in words and figures as follows, to wit:

In the Supreme Court of the United States, ss.

ALFRED E. TILTON AND CHARLES E. TILTON, appellants. *vs.* JOSEPH B. COFIELD, DANIEL WITTER, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Hallack, and Charles Hallack, appellees.	Appeal from the supreme court of the Territory of Colorado.

John Q. Charles being duly sworn according to law, on oath says that he is acquainted with the property in controversy in the above-entitled suit lately determined in the supreme court of the Territory of Colorado, and taken by appeal from the said supreme court of said Territory to the Supreme Court of the United States; that he knows the value of said property now & the value thereof since before the com-
298 mencement of said suit in the district court of the first judicial district of said Territory. That the said property is now and since before the time last aforesaid has been worth more than the sum of twenty-five hundred dollars in cash. And further deponent says not.

J. Q. CHARLES.

Subscribed & sworn to before me this 11th day of August, A. D. 1874.
[SUPREME COURT SEAL.] JNO. W. WEBSTER,
Clerk Supreme Court Colorado Territory.

(Endorsed:) Alfred E. Tilton & Charles E. Tilton, appellants, vs. Joseph B. Cofield, Daniel Witter, et als., appellees. Affidavit of value of property. Filed August 11th, A. D. 1874. Jno. W. Webster, clerk.

And afterwards, to wit, on the thirteenth day of August, A. D. 1874, came the said appellants, Alfred E. Tilton and Charles E. Tilton, by their solicitors, and filed in said supreme court the citation and affidavit of service thereon, which said original citation and affidavit of
299 service thereon is hereto attached, expressed in words and figures as follows, to wit:

300 UNITED STATES OF AMERICA, *ss:*

To Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Halleck, and Charles Halleck, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal taken by Alfred E. Tilton and Charles E. Tilton in a certain cause lately determined in the supreme court of the Territory of Colorado, wherein the said Alfred E. Tilton and Charles E. Tilton were appellants, and you, the said Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Halleck, and Charles Halleck were appellees, which said cause has been taken by appeal by the said Alfred E. Tilton and Charles E. Tilton to the said Supreme Court of the United States, to show cause, if any there be, why the judgment rendered in the above-

entitled cause and appealed from as aforesaid should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable James B. Belford, associate justice of the supreme court of the Territory of Colorado, this 8th day of August, A. D. 1874.

JAMES B. BELFORD,
Associate Justice Supreme Court of Colorado Territory.

301 TERRITORY OF COLORADO,
Arapahoe County, ss:

On this 13th day of August, A. D. 1874, Alfred C. Phelps, of lawful age, being duly sworn according to law, on oath deposes and says that he has duly served the within citation by delivering true and correct copies thereof to Amos Steck and E. L. Smith, two of the attorneys of the within-named Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, Erastus F. Halleck, and Charles Halleck.

ALFRED C. PHELPS.

Subscribed & sworn to before me the said 13th day of August, A. D. 1874.

[SEAL.] JNO. W. WEBSTER,
Clerk Supreme Court Colorado Territory.

(Indorsed:) Alfred E. Tilton & Charles E. Tilton vs. Joseph B. Cofield, Daniel Witter, et al. Citation & aff. of service. Filed August 13th, 1874. Jno. W. Webster, clerk.

302 UNITED STATES OF AMERICA,
Territory of Colorado, ss:

I, John W. Webster, clerk of the supreme court of the Territory of Colorado, do hereby certify that the above and foregoing is a true and complete copy of the record of proceedings had and judgment given in the cause therein mentioned as the same now appears remaining in my office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the supreme court of the Territory of Colorado at Denver, this twenty-eighth day of August, A. D. 1874.

[SEAL.] JNO. W. WEBSTER,
Clerk of the Supreme Court Colorado Territory.

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304 To which certified transcript of record, under the amendment to rule 8 of the Supreme Court of the United States, is hereto attached copies of the opinions of the court filed in said cause, which are in words and figures as follows, to wit:

Opinion of the court.

In the supreme court, February term, 1874.

ALFRED E. TILTON ET AL. *vs.* JOSEPH B. COFIELD ET AL. } Appeal from district court, Arapahoe County.

HALLETT, *C. J.:*

Appellants sued out an attachment against Judson H. Dudley &

Thomas T. Ames for the sum of $2,620.80, which was levied upon property belonging to Dudley. Pending the suit, Dudley conveyed two of the lots to Jno. Alexander, who subsequently conveyed the same lots to the appellees, Erastus F. & Charles Hallack. Other lots upon which the writ was levied was conveyed to David H. Moffat, jr., to secure a loan of $2,500 made by him to Dudley, and Moffat, with Dud-
305 ley's assent, subsequently sold and conveyed these lots to the appellees, Cofield, Witter, and Whitsitt. The other appellees claim by assignment from the parties last named.

In the affidavit for attachment the demand was alleged to be for goods sold and delivered, and the declaration contained the common counts. After the above-mentioned conveyance had been made, appellants amended the affidavit and declaration and counted upon a promissory note for the sum of $2,592.80, dated Sept. 17, 1864, bearing interest at the rate of two per cent. per month from date until paid, and increased the damages laid in the declaration from $3,000 to $7,000. Upon the declaration as amended, Dudley confessed judgment for $5,652.80, which, it will be observed, is more than double the amount claimed in the original affidavit.

To satisfy this judgment execution was awarded against the property upon which the attachment had been levied, and this bill was filed to set aside that portion of the judgment and enjoin any sale of the property.

By a supplemental bill and the answer thereto it appears that since this bill was filed the property had been sold to appellants under
306 an execution issued on the judgment.

The statute regulating attachments provides that the writ shall be issued upon affidavit filed by the creditor, stating the nature and amount of the indebtedness, and the officer is required to levy the writ upon property of the debtor of value sufficient to satisfy the sum sworn to be due, (Rev. Stat., 52,) When the writ is levied upon real estate, the officer is required to file a certificate of the fact in the office of the county recorder, as notice to other creditors and subsequent purchasers. (Rev. Stat., 378.) The purpose of the law is to enable the creditors to seize property and hold it for the satisfaction of the judgment to be obtained in the cause, and of course the lien of the attachment cannot be greater than the indebtedness stated in the affidavit and writ. Accordingly it is held that without service of process or appearance by the defendant, the judgment cannot exceed the sum stated in the affidavit, with accruing interest (Hobson vs. Emporium R. E. & A. C. Co., 42 Ills., 306; Drake's Attachment, § 449, A.) And it would seem that in cases commenced by attachment in which process is served upon the defendant, he may confine the plaintiff to the cause or causes of
307 action stated in the affidavit, as well as the sum therein named. (Turmison vs. Field, 21 Ills., 108.) But where the defendant, without objection, pleads to matters not alleged in the affidavit, or confesses judgment for a greater sum than is therein demanded, he passes by the question of variance between the writ and declaration, and waives objection upon that ground. This is not, however, material to our present inquiry, which relates to the effect of the attachment proceeding upon the rights of third parties who have acquired an interest in the property pending the suit.

Whatever the rule may be as to the defendant, it is clear that purchasers of the attached property take it subject to the lien of the plaintiff for the sum stated in the affidavit and writ, with accruing interest, if he shall obtain judgment in that action for so much. To this extent the

record, which is made for that purpose, advises them of the encumbrance upon the property, & therefore they may be presumed to have knowledge of the fact.

But it is said that the right to amend attachment proceedings is conferred by statute, and liberally indulged by courts under which new causes of action may be added, or the sum stated in the affidavit
308 and writ increased, and the property held liable for the whole amount.

It will be observed that the 8th sec. of the attachment act, which confers the right to amend, relates only to insufficiencies in the affidavit, writ, and bond, and not to causes of action altogether omitted therefrom. But conceding that a mistake as to the amount of the indebtedness may be corrected, and even that a cause of action omitted from the affidavit by mistake may be inserted under the authority of that section without prejudice to the proceedings upon which the defendant may rely, it is obvious that third parties cannot be affected by an amendment of that kind. Purchasers and creditors who acquire an interest in the property during the pendency of the suit are entitled to stand upon the record as it existed at the time such interest was acquired, and of course they cannot be supposed to have knowledge of any matter of which the record does not advise them.

That the plaintiff, by an imperfect statement of his case, may give such notice of his right as will affect purchasers and other creditors as well as the deft. in the cause, there is every reason to believe. If, for instance, the creditor should state the facts upon information and
309 belief instead of upon his own knowledge; or if he should claim several distinct sums of money, and then state the aggregate amount of them incorrectly, he would probably give to all full notice of his right, although not in the precise manner prescribed by the act.

But the present case cannot be brought within any rule, however liberal, upon which amendments may be allowed in attachment proceedings to affect the right of strangers to the suit. In the original affidavit appellants claimed an indebtedness of $2,620.80 for goods, wares, and merchandise sold and delivered, and there was nothing whatever to advise the defendant or any other person of any additional claim for interest or upon any other account. The writ followed the affidavit, and the declaration contained the common counts, with a general statement attached corresponding with the several counts and denominated a copy of the account sued on. The damages were laid at $3,000, exceeding somewhat the amount stated in the affidavit, according to the usual practice by which the pleader may state any sum which will cover his demand. Nowhere in these papers was there anything to indicate even remotely that appellants had any other demand
310 than that which was set forth in the affidavit, and so the record remained until after the attached property was sold to appellees.

It is claimed that the promissory note which was afterwards brought in by amendment might have been given in evidence under the common courts in the original declaration, but this will not impair the rule which must control the decision of the question. If we suppose that appellees were by the declaration notified of every cause of action which might have been proved under the common counts, the lien of the attachment could not attach for more than was expressed in the writ and affidavit, with accruing interest.

And the interest here referred to is that which might have been recovered upon the case made in the original affidavit of which only appellees had notice. The promissory note which was subsequently brought

into the proceedings by amendment, although given for the consideration stated in original affidavit, contained a stipulation for interest at a much higher rate than could have been obtained without its aid, & this was in substance, if not in fact, a new cause of action. By it the amount of the judgment was greatly increased and if the property should
311 be held liable for its payment appellees would become responsible for a demand of which they had no notice, actual or constructive, at the time they purchased.

No argument is required to prove that the right to amend cannot be exercised in that manner to the prejudice of strangers to the suit. Several cases are reported which illustrate the principle.

A writ of attachment was levied in March, 1827, and the officer's return was dated June 6 of that year. On the 22 May, in the same year, a mortgagee of the premises attached recorded his mortgage and thus obtained a preference over the creditor, notwithstanding the return to the writ was afterwards amended so as to show the true date of the levy. It was said arguendo, that a purchaser for a valuable consideration, ignorant of any attachment at the time of his purchase, would unquestionably have held against a creditor claiming under that attachment, and no amendment of the officer's return would defeat his title. Emerson vs. Upton, 9 Pick., 167. Upon an execution against Wm. Krager, the goods of Benjamin were seized and the amendment of the judgment and execution by which the latter's name was inserted was not
312 allowed to defeat the title of an intervening purchaser. Shirley vs. Phillips, 17 Ills., 470. The principle is also affirmed in McCormick vs. Wheeler, 36 Ills., 114, and doubtless other cases may be found to the same point. We have therefore no hesitancy in saying that the amendment of the affidavit, writ, and declaration did not affect the rights of appellees in the property attached, or authorize the entering of a judgment against the property in their hands for more than could have been claimed upon the record as it stood prior to that time.

Assuming that appellees acquired an interest in the property attached before the writ and declaration was amended, a matter which will be considered more at length hereafter, we will endeavor to ascertain the effect of the amendment & the judgment taken in pursuance thereof upon the lien of the attachment.

As we have seen, appellants had a lien upon the property attached at the time of the sale to appellees for the sum of $2,620.80, for which they might have taken judgment. The most that can be claimed now is that this lien still subsists, and that the judgment against the property may be enforced for that amount. In a proceeding by at-
313 tachment, the lien of the writ merges in the judgment taken in the cause, and the latter takes effect upon the attached property as of the date of the levy. (Bagley & Ward, 37 Cal., 121.)

When, as in this case, the judgment is for more than the plaintiff may rightfully demand against the attached property, there would appear to be some difficulty in giving effect to it, contrary to its tenor. If, for instance, appellants had sought and obtained a special execution against the property for the $2,620.80, so specified in the affidavit before the amendment, the judgment being for a larger sum, there would be some question as to the power of the court thus to limit the effect of the judgment. If, however, this is a difficulty which equity will disregard, the form of the judgment being immaterial, if, in good conscience, appellants are entitled to a lien upon the property for any sum, it will not be profitable to discuss this point further. As between attaching creditors it appears to be well settled that a prior attachment will be dis-

solved if the creditor take judgment for more than he is entitled too under his writ or upon a cause of action not specified therein. (Drake on Attachment, §282.)

314 The suggestion that this rule cannot prevail in this Territory because of the peculiarity of our statute, which admits creditors whose writs are returnable to the same term of court to share pro rata in the proceeds of the attached property, is not supported by the reason upon which the rule is said to be founded. In Willis vs. Crocker, 1 Pick., 204, it was said that the subsequently attaching creditor had a vested right to the excess beyond the amount of the judgment to be rendered upon the writ of the first attaching creditor as it was when served, and the same reason for the rule is assigned in other cases. The proposition affirmed is that, he whose writ is first levied shall not be allowed to appropriate more of the common fund than he has demanded in his writ, & thus diminish the sum to which others are entitled, and it is just as applicable to the case in which the creditors share pro rata, as to the case in which one holds a preference over the other. In either case what is taken by one creditor cannot be awarded to another, and although the effect of the rule may be different its applicability in both classes of cases cannot be doubted.

315 Whether changing the cause of action, or adding to the demand without actual knowledge on the part of the creditor of the existence of other liens upon the attached property, will work a dissolution of the attachment, is not entirely clear upon authority. The cases are reviewed in Page vs. Jewett, 46 N. H., 441, and the language of the court, although not directly to the point, appears to support the notion that the attachment will in such cases be dissolved. But in Felton vs. Wadsworth, 7 Cush., 587, the mistake of the plaintiff's attorney in taking judgment for too much was not regarded as sufficient to dissolve the attachment, and the idea advanced is that there must be an intention to do wrong or fraud in fact, on the part of the plaintiff before such a consequence can be visited upon him. The conclusion of the court was that there must be fraud to bring a case within the principle of the adjudged cases, & this could hardly subsist without a consciousness of wrong on the part of the creditor. To apply this principle to a case in which judgment has been taken with the assent of the debtor for a sum that was clearly due, and without actual knowledge of the existence of any other lien upon the property attached it would

316 seem that the creditor not being chargeable with any intention to do wrong should not in equity at least be deprived of his right. But this distinction, if it exists, does not arise in the case at bar, inasmuch as it is shown by the record that appellants had knowledge of the sale to appellees before they took judgment and sued out execution against the property.

Whatever rule is applied where the creditor has only constructive notice of the existence of other liens upon the property, if with actual knowledge of such liens he attempts to enlarge his own demand against the property, he is clearly guilty of fraud, in fact as well as in law. In such case the creditor, with full knowledge of the rights of others, attempts to appropriate their property to his own use through and by means of the forms of law; and he is therefore justly amenable to the charge of fraud.

In the bill of complaint filed by appellees, it was alleged that appellants had notice of the sale to appellee at the time it was made, and although the charge is denied in the answer, it is, I think, sustained by the copy of the judgment in the attachment suit which was attached

317 to the bill, and was put in evidence by the stipulation of the parties.

By the transcript of the judgment it appears that the appellees, Cofield, Witter, Whitsitt, and Steck, appeared in the attachment suit before judgment was rendered, and asked to be made parties, and for leave to contest appellants' claim, but they were not allowed to do so. It is not shown upon what ground appellees proposed to contest appellants' claim, but the fact that they appeared in the case and demanded a hearing was sufficient to put appellants upon inquiry, and if they did not ascertain the facts in regard to appellees' title, the fault was their own.

In this feature the case is like that of Hale vs. Chandler, 3 Mich., 532, in which the like circumstances was held to be sufficient to charge the plaintiffs in attachment with notice. That was a bill by an attaching creditor to postpone a judgment obtained by another creditor upon a writ levied prior to the complainant's; and the principles upon which such relief may be granted are very fully discussed. In addition to the circumstances that appellees attempted to interfere in the attach-
318 ment suit, a special execution was obtained against the property attached for the whole amount of the judgment, and we learn from the supplemental bill and answer, that since this suit was begun the property has been sold under such execution, and that appellants have become the purchasers.

It is obvious that appellants knew, before they took judgment, that appellees had or claimed to have some interest in the property, and by proceeding to judgment & execution against the property they have manifested a disposition to appropriate the property to their own use, without regard to the right of appellees; & this brings the case within the principle of all the authorities that I have examined. The circumstance that appellees are purchasers of the property cannot be relied upon to distinguish this case from those cited.

A purchaser is entitled to the same protection as an attaching creditor, and he may as confidently appeal to a court of equity for such protection. The appellees Erastus F. & Charles Hallack, holding two of the lots by an unquestioned title from Dudley, are fully in the attitude of purchasers. The other appellees have an equitable right only,
319 having failed to obtain a legal title by reason of the want of a seal on the power of attorney from Dudley to Chever. The deed to Moffat was for that reason insufficient to pass the legal title. (Mann vs. Worthington, 3 Scam., 26; Peabody vs. Hoard, 46 Ills., 242.) And parol notification of the deed did not cure the defect. (Story's Agency, § 242, 252.) But the instrument was a sufficient memorandum under the statute of frauds, and has every element of a perfect contract, which will be enforced in equity.

It is a doctrine of the court that things agreed to be done shall be regarded as actually performed, and the appellees other than the Hallacks are, for the purposes of this suit, equally with the latter, to be regarded as purchasers. The circumstance that they have not obtained a conveyance, which a court of equity will award, cannot defeat their right.

I understand that one who holds under an executory contract cannot defeat a prior equity, as perhaps he may who holds by legal title. (Villa vs. Rodriguez, 12 Wal., 323.) But this principle has no application to the case at bar, in which appellants are visited with the conse-
320 quences of their own wrong. By doubling the amount of their judgment, and seeking to charge the property attached with an amount to which in the hands of appellees it was not subject, they aban-

doned the lien of their attachment, and lost their right to enforce it, and this must be true in support of an equitable as well as a legal title.

The allegations of the bill as to the title of Cofield, Witter, Whitsitt, Roche, and Steck, are not, strictly speaking, according to the fact, inasmuch as those parties have an equitable title only. To have complete relief these appellees should have brought their bill for specific performance of the contract with Dudley, making appellants parties thereto. Probably Dudley might, if he were here, object that the controversy is not determined by the decree of the court below, but he has not appealed, and we must presume that he is satisfied with the decree. Williams vs. Starr, 5 Wis., 534. The evidence establishes an equitable title in the appellees, excepting the Hallacks, who, as we have seen, have a legal title, and thus falls short of the allegations of the bill, but
321 does not vary therefrom. So far as it goes the evidence is in support of the bill, but it does not come up to the point of establishing a legal title in those who claim under the deed to Moffat. The deed to Moffat, as we have for convenience called it, which is relied upon in the bill to establish the legal title of those claiming under it, is the evidence of the equitable, which the court by its decree sought to protect, and therefore there was no surprise to any one. We do not say that the bill is sufficient to maintain a decree for specific performance, but at the time it was filed no sale had ever been made to appellants, and we think that the court might protect appellees' rights in the property attached against the unwarrantable assault of appellants, notwithstanding the fact that the bill claimed more than the parties complainant were entitled to. Such was the relief given by the court below, and we find no error in the decree of which the appellants may complain.

The decree of the district court is affirmed, with costs.

322 (Endorsed:) 133. Tilton et al. vs. Cofield et al. Opinion recorded. Filed July 10th, 1874. Jno. W. Webster, clerk.

Dissenting opinion.

TILTON
vs.
COFIELD.

BELFORD, J., dissenting.

I am unable to concur in the conclusion reached by the majority of this court. The property at the time of the sale by Dudley to Cofield and his associates was in the custody of the law, being bound by the levy of the attachment. They were then purchasers with notice and chargeable with every fact that the record disclosed at the date of their purchase. Davis vs. Christain, 15 Grattan, 41; Roy vs. Doe, 2 Blackf., 258. He who buys property while it is in the custody of the law
323 and subject to a decree or judgment that may be made or entered by a court in the enforcement of a specific lien, is not a favored purchaser, nor is he entitled to the most benignant consideration of a court of equity. Anciently such purchases were regarded as void, but this harsh doctrine has yielded to the softening influence of time, and the later decisions instead of holding that a conveyance is annulled by the pendency of an action simply affirm that the property purchased shall be held subject to the rights of the parties in litigation. Juloi's Lessees vs. Harvey, 11th Md., 524; Meux vs. Anthony, 6 English, 422; Whiting vs. Beebe, 7 English, 566; Harrington vs. Slade, 22

Barb., 166. At the time of the purchase, the demand of the attaching plaintiffs amounted to something over $2,620.85. This claim evidenced by the record, and Cofield and Steck were bound to take notice of it when they bought the property. The defence set up to avoid the payment of this sum is, that after the purchase the attaching creditors increased their demand so that ultimately they obtained judgment for five thousand dollars. There is nothing in the record to show that at the time the amendment was made, the plaintiffs had any knowledge
324 of the alienation of this property. A fraud at that time could not have been meditated against Steck & Cofield, because their connection with the property was not then known. Nor is there anything in the record to show that the claim of the Tiltons was other than honest and just in every respect. I take it to be well settled that a plaintiff can proceed in the suit without noticing the alienation, and the decree he obtains will bind the purchaser. If the plaintiff makes the purchaser a party, the alienee is bound by the previous proceedings in the suit before he was made a party; and he comes before the court in the same plight and condition as the former party and is bound by his acts and may be subject to the costs of the proceedings from the beginning of the suit. Harrington vs. Slade, supra. I am willing to admit that the purchaser should not be chargeable with an amount greater than that claimed by the plaintiffs at the date of the alienation, with interest, but I am not ready to hold that the mere increase of their demand when honestly made forfeits their right to the whole claim against the property seized. Such a doctrine as that would practically arrest and preclude all amendments of the pleadings pending the progress
325 of a case, and, what is more, devolve on the plaintiff a duty never yet recognized or enjoined, namely, that of keeping trace of all alienations made by a defendant pendente lite. (Green vs. Cole, 13 Iredell, 425, 430.) The forfeiture, it can be justified on any principle, must be that of punishment for a fraud attempted or committed. In this case I am unable to discover any fraud in the amendment made, for the reason that the increase of the claim was just, and that the plaintiffs were ignorant of any rights acquired by Cofield and his associates. Nor do I think that Cofield and company were misled, for it nowhere appears that either of these parties felt enough interest in the suit prior to their purchase to inquire and ascertain the amount of Tilton's demand. Whitsitt swears that he bought the property to make money out of it; that he had heard the controversy between Dudley and Tilton canvassed, and the general impression was that it would not amount to much.

Cofield had heard that there was a judgment against Dudley for about twenty-five hundred dollars.

Witter swears that Steck told him that the attachment could
326 not be sustained. What Steck knew or tried to know about the amount of indebtedness does not appear, as he was not examined. They were all anxious, however, to buy the property.

A fair inference from all the testimony is that these gentlemen took advantage of Dudley's embarrassed circumstances to buy the property cheap, trusting to Steck's opinion that the attachment could not be sustained. A speculation promising rich profits was in sight, and the eagerness for trade deadened the caution that would have prompted unimpassioned men to make inquiries as to the status of the property. It is difficult to say that these gentlemen were misled, when not one of them, so far as the evidence shows, ever deigned to make an inquiry at the clerk's office, or to examine *or to examine* a paper in the case, prior

to their investment. I am aware that, as between attaching creditors, it has been held that an increase of the demand of the first creditor will have the effect to dissolve the attachment as to the subsequent creditor. The ground on which some of these decisions is made to rest, is that the subsequent attaching creditor is entitled to the excess, if any, that remains after satisfying the first claim, and that to
327 permit the first creditor to swell his original claim by adding thereto other demands, might lead to the absorption by him of the whole property. With all deference to the courts that have pronounced their decisions, I must say that such a doctrine can only be sustained on the ground that such increase is made with a fraudulent intent, and with a view to secure a dishonest advantage, and that as a punishment for such fraud the attachment is dissolved, and the preference given by the law is destroyed. Were it otherwise, the doctrine would uproot the whole power of amendment, a power essential to the administration of justice, and not unfrequently used even when it does affect existing rights. (Green vs. Cole, supra, 430; Caborga vs. Segar, 17 Penn. St., 514.) Every man who buys property in custodia legis should, as against an honest creditor having a lien upon it, be understood to act with a full knowledge that the courts can, and in cases deemed proper by them, will amend, not only the pleadings, but their records and process, as far as they can do so consistently with truth. A most diligent research has not been rewarded by the discovery of a case that applies the doctrine announced by the majority of this court
328 to a subsequent purchaser; until this time such a purchaser has never been regarded as a favored suitor in any court. Thus in Scott vs. McMillen, 1 Lottell, 307, the court say: "Here the property gives jurisdiction to the court; the right of property is in the court and during the pendency of such a contest no transfer of the property by the debtor can be admitted to produce any prejudicial effect on the complainant's demand." In Murray vs. Lyburn, 2 John Ch. Rep., Chancellor Kent says: "There is no principle better established than that the purchaser of the subject-matter in controversy pendente lite, does not vary the rights of the parties in that suit, who are not to receive any prejudice from the alienation." "He who purchases during the pendency of a suit is bound," says Sir William Grant, "by the decree that may be made against the person from whom he derives title. The litigating parties are exempt from the necessity of taking notice of a title so acquired." "The rule may sometimes operate with hardship, but general convenience requires it." The Bishop of Winchester vs. Payne, 11 Vesey, 194; Osborn vs. Bank, 9 Wheat., 733. Numerous other authorities might be cited to the same effect, but it is unnecessary; see,
329 however, the case of Whiting vs. Beebe, 7 English, 565, and the cases there cited.

There is another view of this case which strikes me as being entitled to more than ordinary consideration. The power of attorney from Dudley to Chever, who makes the deed to the complainants, is not under seal.

In Hayword vs. Haswell, 6 Adolp. & Ellis, 265, it was held that when an agent or attorney had no properly authenticated power to execute a deed of conveyance, but his authority was sufficiently witnessed to authorize him to execute an agreement to make such conveyance it was held to operate merely as an executory agreement.

We then have the complainants Steck, Cofield, Whitsitt, and Witter clothed simply with an executory contract, or in other words with a contract for a conveyance. To perfect their title they must either vol-

untarily obtain a legal conveyance, or bring their bill for specific performance. To this proceeding the Tiltons would have to be made parties. Now, if the complainants whose title, if they have any, is merely equitable, seek to compel Tiltons to convey to them the legal estate, would not equity enjoin upon them the payment of the amount which this record disclosed at the date of their ineffectual purchase from Moffat?

330 In Villa vs. Rodriguez, 12 Wal., 338, it is held that a party holding under an executory contract like this is not a bona fide purchaser; that the doctrine only applies where the legal title has been conveyed and the purchase-money fully paid.

In conclusion, let me recapitulate the facts. We have the complainants clothed simply with a contract for a conveyance. We have a suit pending when the indebtedness claimed amounted to $2,620.85, and a levy by virtue of attachment on the property in question. We have the further fact that the complainants in this bill were informed by record of the amount of Tilton's demand, and they were bound to know that in the progress of the trial this indebtedness might or probably would ripen into a judgment. We have the further fact, that the complainants bought this property for speculative purposes, and doubtless in fixing the price they were willing to pay for it, considered that the plaintiffs in the attachment suit might possibly recover a judgment for twenty-six hundred and twenty dollars and eighty-five cents, together with interest. To this claim, then, they were in no sense innocent purchasers; they bought with their eyes wide open, and should not

331 now be permitted to close them against the performance of a duty which equity and good conscience enjoins upon men thus situated. This would be simple justice, and the conscience of every man, be he jurist or laymen, could not but approve such a determination of the issue. It would seem to me, therefore, that the decree of the court below ought to be so far modified as to require the Tiltons to execute to Cofield and the other complainants a quitclaim deed for this property upon their paying to them the sum of $2,620.85, together with interest at the rate of ten per cent. to the day when said money is paid.

(Endorsed:) 138. Tilton vs. Cofield. Opinion by Belford, J. Recorded. Filed July 10th, 1874. Jno. W. Webster, clerk.

UNITED STATES OF AMERICA,
Territory of Colorado, ss:

I, John W. Webster, clerk of the supreme court of the Terri-

332 tory of Colorado, do hereby certify that the above and foregoing are true and complete copies of all opinions filed in the within entitled cause, as the same appears of file and on record in my office.

In witness whereof I have hereunto subscribed my name, and affixed the seal of the supreme court, at Denver, this twenty-eighth day of August, A. D. 1874.

[SEAL.]

JNO. W. WEBSTER,
Clerk Supreme Court Colorado Territory.

Clerk's fees: Transcript of record, &c., 643 fos. @ 20, $128.60; copy of opinion, 60 fos. @ 20, 12.00; certificate & seal, 1.00—$141.60.

Received payment of appellants.

JOHN W. WEBSTER,
Clerk Supreme Court.

(Indorsement on cover:) No. 285. Alfred E. Tilton & Charles E. Tilton, appellants, vs. Joseph B. Cofield, Daniel Witter, Richard E. Whitsett, Amos Steck, John Roche, E. F. Halleck, and Charles Halleck. Colorado Terr'y sup. ct. Filed 3rd October, 1874.

Supreme Court United States.

OCTOBER TERM, A. D. 1875.

No. 285.

A. E. & C. E. TILTON, Appellants,

vs.

JOSEPH B. COFIELD, DANIEL WITTER, et al., Appellees.

BRIEF FOR APPELLANTS.

GEORGE H. WILLIAMS,
For Appellants.

Printed at the National Republican Printing House, Washington, D. C.

Supreme Court United States.

OCTOBER TERM, A. D. 1875.

No. 285.

A. E. & C. E. TILTON, APPELLANTS,

vs.

JOSEPH B. COFIELD, DANIEL WITTER, ET AL., APPELLEES.

BRIEF FOR APPELLANTS.

STATEMENT.

On the 28th of August, 1865, A. E. & C. E. Tilton sued out from the District Court of Arapahoe county, Colorado, a writ of attachment against Judson H. Dudley and Thomas P. Ames to recover the sum of $2,620.80. On the same day said writ was duly levied upon certain lots and blocks in Denver, Colorado, as the property of said Dudley; and on the next day said writ was duly recorded in the county recorder's office. November 25, 1865, declaration was filed containing the common counts, with an *ad damnum* of $3,000. January 27, 1866, judgment was rendered by the District Court for $2,591.44, and costs, which judgment was reversed by the Supreme Court of the Territory February 10, 1868. March 9, 1867, Dudley, for the alleged consideration of $2,500, by his attorney, Charles G. Cheever, conveyed a large quantity of property, including that attached as aforesaid to David H. Moffat, Jr., (excepting lots 5 and 6 in block 137,

which Dudley conveyed to the Hallecks.) Cheever's power of attorney was dated February 2, 1867, and was without seal or acknowledgment. Appellees (excepting the Hallecks) hold under conveyances from Moffat.

September 12, 1868, the Tiltons filed, by leave of the court, an amended affidavit, bond, and declaration in said suit, joining with the common counts a count upon a promissory note from Dudley & Ames to the Tiltons, dated September 19, 1864, for $2,592.80, and drawing two per cent. interest per month from date, and claiming $7,000 damages.

November 1, 1869, judgment was rendered upon said amended declaration and against said Dudley for $5,642.50, and an order made for the sale of the property attached as aforesaid to satisfy said judgment.

December 7, 1869, Cofield and others filed their original bill of complaint in this case, setting up the foregoing facts and praying for an injunction to restrain the collection of said judgment out of said attached property, &c. Temporary injunction granted. Answer and replication filed. Case referred to a master, by whom depositions were taken and reported to the court; whereupon it was ordered by the court that unless appellees paid appellants the amount of their claim as originally filed, to wit, $2,670.80, within thirty days, the injunction should be dissolved. Appellees did not comply with this order; and on the 13th day of March, 1871, the sheriff, pursuant to the order in said judgment, sold said attached property to said Tiltons for the sum of $6,345.25; and on the 13th day of December, A. D. 1871, duly executed to them his deed therefor.

January 18, 1873, Cofield and others filed their supplemental complaint, setting up, in addition to the facts already stated, said sale and deed. Tiltons answered, setting up the dissolution of said injunction, their purchase, &c.

The District Court upon the whole case decreed—

1. That the execution, order of sale, and proceedings thereon, so far as they relate to the property in question, be set aside and declared void.

2. That the said deed of said property by the sheriff to said Tiltons be declared null and void.

3. Said judgment, so far as it provides for execution against or order for the sale of said property, be vacated.

4. That said property be forever discharged from the lien of said judgment.

5. A perpetual injunction restraining said Tiltons from interfering with or selling said property.

6. Costs against said Tiltons.

This decree was affirmed by the Supreme Court of the Territory, and from that decision this appeal is taken.

Assignment of Errors.

1. The court below erred in vacating the order in said judgment for the sale of said attached property.

2. Said court erred in declaring null and void said execution, sale, and sheriff's deed after the dissolution of said injunction by the laches of appellees.

3. Said court erred in discharging said attached property from the lien of said judgment.

4. Said court erred in granting a perpetual injunction against said Tiltons, restraining them from the collection of their said judgment out of said attached property or any sale or disposition thereof.

5. Said court erred in holding that it had jurisdiction to set aside said judgment or any part thereof.

6. Said court erred in rendering judgment for appellees instead of appellants.

Argument.

It appears that in September, 1864, Dudley & Ames were indebted to A. E. & C. E. Tilton in about the sum of $2,620.80 for goods sold and delivered by the latter to the former. There is no question about the honesty or justice of this indebtedness. It also appears that Dudley & Ames gave to

the Tiltons a promissory note for $2,592, dated September 17, 1864, drawing two per cent. interest per month. The note was given to balance the said account, though there is a slight discrepancy caused by errors in computation, but both represent the same indebtedness.

All the proceedings in the original attachment suit appear to have been regular, but for some reason, which does not appear, the judgment of the District Court therein for the Tiltons was reversed by the Supreme Court of the Territory. It would seem that the Tiltons did not originally expect any delay or defence in the suit. Their original declaration contained only the money counts, under which the note could have been given in evidence. Finding resistance and a determined effort to hinder and defeat the collection of their claim when the case was remanded by the Supreme to the District Court, and after it had been delayed for three years, they applied to said court to amend the proceedings so as to enable them to recover the amount of interest which had accrued on said note, and this leave was granted. (Record, 55.)

It is contended that the amendment *ipso facto* dissolved the attachment as to appellees.

To this it may be answered—

That if appellees were Dudley's creditors, with attachments upon the property in question levied thereon after Tilton's attachment, this doctrine would not hold good unless it also appeared that the amendment was made to commit a fraud.

Fulton *vs.* Wadsworth, 7 Cush., 587.

But appellees are not attaching creditors. They purchased or attempted to purchase the property in dispute after it was attached. They have not the equities of creditors. Creditors have an equitable claim upon the debtor's property, because they gave him credit upon it. Their trust was induced by his property. They would seem to have equal equities, but one by superior diligence in taking steps to collect his debt may acquire an advantage. In some States, however, when one creditor attaches, all others may come in for a *pro rata*

distribution of the debtor's assets. This is so in Colorado to a certain extent.

A purchaser of property after it is attached has no equity as against the attaching creditor. He has no right to interfere between the debtor and the creditor. He buys property in the custody of the law, and takes it subject to what the law may decide or do about it. He cannot buy into a lawsuit, and then claim he is not bound by the judgment therein, because it is not what he expected it would be. A purchaser of attached property has no greater right with respect thereto than the defendant from whom he purchased. He simply steps into the defendant's shoes. When one buys attached property he buys with reference to the attachment. He takes his chances as to the result of the proceeding. If the attachment is dissolved he may gain, but if there is a judgment against his vendor for more than he anticipated he may lose. *Volenti non fit injuria.*

Campbell *vs.* Hall *et al.*, 16 N. Y., 575.
Salisbury *vs.* Mors, 7 Lansing, 364.
Castle *vs.* Noyes, 4 Kernan, 329.

It appears that the amendment was made in good faith, to cover an amount actually due; that the original and amended affidavits, and the original and amended complaints were for the same cause of action, and that the amendments were only made to cover the interest which had accrued on said cause of action, in consequence of an unexpected delay in obtaining judgment caused by the debtor.

The amendment was made by the order of the court. The court had jurisdiction to make this order. If it was wrong it was only error. The judgment of the court was that the Tiltons recover of Dudley $5,470.80, and that the property theretofore attached in said suit be sold to satisfy said judgment, &c. When this judgment was rendered the court had jurisdiction of the parties and of the subject-matter, including the property in question held by its attachment.

The judgment of a court having jurisdiction of the parties

and the subject-matter is conclusive upon parties and privies, though it may contain errors for which it would be reversed in a revising court.

Bates *vs.* Spooner, 45 Indiana R., 489.
Hardin *vs.* Lee, 51 Missouri, 241.
Thompson *vs.* Meek, 3 Sneed Tenn., 27.
Porter *vs.* Southern, 7 B. Monroe, 289.

A court of chancery has no jurisdiction to set aside or nullify the judgment of a court of law upon the alleged ground of error.

Cameron *vs.* Bell, 2 Dana, 328.
Reimer *vs.* Cantillon, 4 Johns. Ch., 85.

It is not pretended by the bill in this case that the amount of the judgment was not due from Dudley to the Tiltons.

There is no charge of collusion or fraud between them. Appellees' whole case in effect is, that the amendment made in the case of Tilton *vs.* Dudley, by leave of the court, was erroneous, and therefore fraudulent and void as against them. This is simply asserting that for an error in the judgment of a court of law, a court of equity may declare it void. To the contrary are the authorities—

Shottenkirk *vs.* Wheeler, 3 John. Ch., 275.
Suydum *vs.* Beals, 4 McLean, 12.
Walker *vs.* Robbins, 14 How., 584.

It was not error in the court to allow the amendment. Amendments are within the discretion of the court.

Tiernan *vs.* Woodruff, 5 McLean, 135.

Section eight of the Practice Act, page 55, Revised Statutes of Colorado, is as follows: "No writ of attachment shall be quashed, nor the property taken thereon restored, nor any garnishee discharged, nor any bond given by him cancelled, nor any rule entered against the sheriff discharged on account of any insufficiency in the original affidavit, writ of attachment, or attachment bond, if the plaintiff or some

credible person for him shall cause a loyal and sufficient affidavit or attachment bond to be filed in the writ, to be amended in such time and manner as the court shall in their discretion direct, and in that event the cause shall proceed as if such proceedings had been originally sufficient."

The amendment in question is within a liberal construction of this statute. Appellees purchased, it must be presumed, with the understanding that it was within the province of the court to allow amendments. They took their chances as to this, as well as to any other order in the case. Can the appellees come voluntarily into the suit and undertake to control it, so as to deprive the Tiltons of those rights therein, which otherwise they would have had against Dudley?

It is said that the Tiltons knew of the purchase of appellees at the time of the amendment, and for proof of this reference is made to the transcript of the judgment in the case of Tiltons *vs.* Dudley. (Record, 22 and 23.) If said transcript proves this fact, it also proves that the same fact was known to the court; and so the court, with a knowledge that appellees were purchasers after the attachment was levied, rendered the judgment for $5,470.80, and ordered the property sold to satisfy it. Appellees were parties to this judgment and order, and are estopped by them. They were before the court at the time with a motion for leave to contest Tilton's claim. This they had no right to do. They could have objected to the order on the ground that the attachment was dissolved as to them. They cannot correct their blunder in a court of equity. They have no remedy here, having acquiesced in the decision of a court of law adverse to them. Equity will not relieve a party from the effect of his own negligence or mistake of law.

Truly *vs.* Wanser, 5 How. 141; 2 Story's Eq Ju., sec. 897.

They had an adequate remedy at law. It was competent for them in the case of the Tiltons *vs.* Dudley to move to set aside the order, or to set aside the sale, as to the property which they had purchased.

Gould *vs.* Mortimer, 26 Howard's Pr. R., 167; 3 Sneed, 321.

It appears from the supplemental bill and the answer thereto, (Record 92 and 101,) that the district judge enjoined the collection of the judgment of $5,470.80 from the property attached, upon condition that the appellees should pay to the appellants within thirty days the sum of $2,670.80, the amount named in the original affidavit for an attachment. This they refused to do. They thereby consented to the dissolution of the injunction. They then consented to the sale to which they now object. There can be no possible ground for objecting in equity to the payment of the amount claimed in the original affidavit out of the property attached. Appellees had an opportunity to save their property by discharging what they admit was before and at the time of their purchase an equitable and just lien upon it. They preferred, however, to ask a court of equity to carry out their speculation by cheating appellants out of what appellees expected and impliedly agreed to pay when they purchased the property.

Appellees case is fatally defective in not proposing to do as well as to ask equity. They should have tendered to the Tiltons the amount named in the original affidavit for an attachment. This, as they admit, was a valid lien upon the property when they purchased. They knew this and expected to pay it. The Tiltons are equitably, if not legally, entitled to this amount out of Dudley's property. The decree of the court below is unconscionable in this respect.

Adams' Equity, page 191, and cases cited.
Comstock *vs.* Johnson, 46; New York., 615.
Corby *vs.* Bean, 44 Missouri, 379.

Whatever may be the rule in New England, where the proceedings upon attachment are somewhat peculiar, it is submitted that under the Colorado statute property lawfully seized and held by a writ of attachment cannot be discharged therefrom without the order of the court or the consent of plaintiff. If the plaintiff files an amendment to his complaint without leave of the court, it amounts to nothing; but if he amends his complaint and proceedings by leave of the court,

then there is in effect an adjudication that the attachment shall stand with the amendment, and the writ holds as well after as before this adjudication. This judgment cannot be set aside by a court of equity at the instance of any one upon the assumed ground that there was error in this adjudication.

Bates et al. *vs.* Spooner et al., 45 Ind., 489.

The Tiltons are in a position to avail themselves of the well-established doctrine of the law, "Whoever is prior in time is prior in right." The maxim, *vigilantibus non dormientibus jura subveniunt* is as good in equity as at law.

Slemmer's Appeal, 58 Penn. St., 168.

It cannot be denied that, in equity and good conscience, the Tiltons are as much entitled to the land in question for the goods which they advanced as Cofield & Co. are for the money which they advanced. The actual value of the goods was $2,592.80. The actual amount of money was $2,500. Credit was given for the goods upon the faith of this property. The money was paid with an understanding that the property was subject to a lien for the value of the goods. If this bill is sustained the Tiltons lose everything. If dismissed, Cofield & Co. lose the property in dispute, but have a very large amount of other property left for their $2,500. Where equities are equal, priority gives preference, and one having the legal advantage will not be deprived of it.

Van Meter *vs.* McFadden, 8 B. Monroe, 441.

Russell *vs.* Petroe, 10 id., 186.

Jackson *vs.* Halloway id., 133; 7 Lansing, 6.

It will be observed that Cofield, Witter, and others, appellees, (excepting the Hallecks,) have only an equitable title to the lots which they claim, as the deed therefor was made by Dudley's attorney, whose power to make said deed was not under seal. (Record, 65.) They have, therefore, only an executory contract for the lots which they claim. Standing in court upon this contract, they have no right to a decree set-

ting aside the sale to the Tiltons. If they have any remedy it is by bill for a specific performance, making Dudley and the Tilton parties, upon which the court could decree equity to all.

A decree setting aside the sale to the Tiltons leaves the legal title to the property in Dudley. Such a contrivance, if allowed, enables a debtor to keep his property and avoid the payment of his debts. Appellees holding under contract are not *bona fide* purchasers.

Boone *vs.* Chiles, 10 Peters, 199.

The allegations of the bill are that Cofield, Witter, and others are the owners of the property and entitled to its possession. This is controverted by appellants. The evidence is that they (excepting the Hallecks) have an equitable interest in or an executory contract for said property. This is a fatal variance. A party is not allowed to state one case in a bill or answer, and make out a different one by proof. The *allegata* and *probata* must agree. The latter must support the former.

Boone *vs.* Chiles, 10 Peters, 209.

Dudley was a defaulting and absconding debtor. He owed the Tiltons. They took the steps provided by law for the collection of their debt. They proceeded in good faith and according to the decisions of the courts. Appellees are speculators. Taking advantage of Dudley's circumstances they bought a very large amount of property for an inadequate price. They will probably make money out of the transaction if their bill is dismissed. They are now trying to defeat the collection of an honest debt. They are simply attempting to commit a fraud under the pretence that the court in which the attachment was pending committed an error in allowing an amendment. A court of equity will not give them aid.

This bill ought to be dismissed. It is too late to give appellees the lands upon the condition of paying money to appellants. Appellees do not propose or ask any such thing.

They have refused it when proposed by the court. They have suffered the legal title to the lands to be vested in the Tiltons. They have determined to have all or nothing The equities of the case are clearly with the appellants.

GEORGE H. WILLIAMS,
For Appellants.

Supreme Court of the United States.

No. 88, October Term, 1876.

ALFRED E. TILTON AND CHARLES E. TILTON,

Appellants,

v.

JOSEPH B. COFIELD, DANIEL WITTER, RICHARD E. WHITSITT, AMOS STECK, JOHN ROCHE, E. F. HALLECK AND CHARLES HALLECK,

Appellees.

BRIEF FOR APPELLANTS.

GEO. TICKNOR CURTIS,
Of Counsel.

NEW YORK:
EVENING POST STEAM PRESSES,
208 Broadway, cor. Fulton Street.
1876.

Supreme Court

OF THE UNITED STATES.

No. 88.—October Term, 1876.

Alfred E. Tilton and Charles E. Tilton, Appellants, *vs.* Joseph B. Cofield, Daniel Witter, Richard E. Whitsitt, Amos Steck, John Roche, E. F. Halleck and Charles Halleck. Appellees.	In Equity.

Appeal from the Supreme Court of the Territory of Colorado.

Statement of Case.

The appellants, trading under the firm name of A. E. & C. E. Tilton, brought an action for a money demand against Judson H. Dudley and Thomas P. Ames, copartners doing business

under the firm name of Dudley & Ames, in the District Court of the First Judicial District of the Territory, county of Arapahoe. This action was commenced according to the local practice by filing (Aug. 28, 1865), an affidavit stating the debt sued for at $2,620.80, for goods, wares and merchandise, sold and delivered to the defendants by the plaintiffs, stating also that Dudley was about to depart, and that Ames had departed from the territory.

Thereupon the clerk of the district court (the plaintiffs having given the requisite security) issued a writ of attachment directing the sheriff of Arapahoe county to attach so much of the estate, real or personal, of the defendants, to be found in his county, "as shall be of value sufficient to satisfy the said debt and costs, according to the said complaint, *and such estate so attached in your hands to secure or so to provide, that the same may be liable to future proceedings thereupon according to law*, at a district court to be holden at Denver city, &c., on the first Tuesday of December, A.D. 1865." * * * (Record, pp. 10, 11.)

The sheriff made return that he had attached the following real estate of the defendant, Dudley :

Lots	5 and 6	in Block	94,	East	Division of Denver city.
"	11 and 12	"	78,	"	"
"	1, 29, 30,	"	78,	"	"
"	22,	"	175,	"	"
"	1, 27, 28,	"	159,	"	"
"	1, 5, 6,	"	137,	"	"
"	1, 17, 18,	"	11,	"	"
"	1, 7, 8,	"	6,	"	"
"	1, 31,	"	127,	"	"
"	7,	"	63,	Western	Division of Denver city.
"	4,	"	41,	"	"
"	1, 8,	"	65,	"	"
"	1, 2,	"	40,	"	"
"	1, 8,	"	63,	"	"

Record, p. 12.

Nov. 25, 1865, the plaintiffs (Tiltons) filed a declaration in trespass on promises, alleging that defendants, Dudley and

Ames, were indebted to them in the sum of $3,000 for goods, &c., sold and delivered for moneys had and received, for money lent, &c., for money laid out and expended, and for money due on account stated.

Record, pp. 12, 13.

Feb. 2d, 1867.—Judson H. Dudley (one of the defendants whose property in the foregoing lots had been attached as aforesaid), describing himself as of New York city, executed an instrument purporting to be a power of attorney to Charles G. Cheever, of Denver, authorizing him to sell and convey any and all real estate of him, the said Dudley, in the county of Arapahoe, Territory of Colorado. This power was not executed under seal. It had appended to it what purported to be an acknowledgment by Dudley, before a notary public, in Douglass county, Nebraska, on the 2d of February, 186 , the year being left blank. It was recorded in the county clerk's office of Arapahoe county, Colorado Territory, May 21, 1867, at 9 o'clock A. M.

Record, p. 65.

March 9, 1867.—Cheever executed an instrument purporting to convey, as the attorney of said Dudley, to David H. Moffat, Jr., all Dudley's right, title, &c., in and to a large number of lots in the county of Arapahoe, among them being the following, which were embraced in the attachment above mentioned, to wit:

Lots	27,	28,	in Block	159,	East	Division,	Denver City.
"	5,	6,	"	137,	"		"
"	7,	8,	"	6,	"		"
"		31,	"	127,	"		"
"	5,	6,	"	94,	"		"
"	11,	12,	"	78,	"		"
"	29,	30,	"	78,	"		"
"		22,	"	175,	"		"
"		7,	"	63,	Western	Division,	Denver City.
"		4,	"	41,	"		"

This deed contained a warranty of title, was executed under

seal by Cheever, as attorney of Dudley, was acknowledged by Cheever before a notary public in Arapahoe county, and was recorded May 18, 1867, at 2 o'clock P.M.

Record, pp. 66–69.

May 23d, 1867.—David H. Moffat, Jr., executed an instrument purporting to convey to Daniel Witter, Joseph B. Cofield, and Richard E. Whitsitt, a large number of lots in Denver, among which were the following, which were embraced in the attachment above mentioned, to wit:

Lots	27 and 28,	in Block	159,	East Division,	Denver City.
"	7 and 8,	"	6,	"	"
"	31,	"	127,	"	"
"	25 and 26,	"	209,	"	"
"	5 and 6,	"	94,	"	"
"	11, 12, 29, 30	"	78,	"	"
"	15 and 16,	"	62,	"	"
"	13 and 14,	"	129,	"	"
"	11 and 12,	"	194,	"	"
"	21 and 22,	"	175,	"	"
"	7 and 8,	"	63,	West Division,	Denver City.
"	4,	"	41,	"	"

This deed was recorded May 23rd, 1867.

Record, pp. 69–71.

It would appear, if Exhibit 15 were properly received in evidence (Record, p. 53, folio 138, and p. 79, folio 206), that on the 16th of August, 1867, said Cofield executed an instrument purporting to grant to said Witter and said Whitsitt the following lots embraced in the attachment above mentioned, namely:

Lots	13, 14,	in Block	129,	in East Division,	Denver City.
"	11, 12,	"	78,	"	"

This deed was recorded Aug. 23, 1867.

Record, p. 82.

It would appear, if exhibit 14 (Record, p. 81) was properly received in evidence (Record, pp. 53 and 79), that on the 8th of Oc-

tober, 1867, said Cofield, Witter and Whitsitt executed an instrument purporting to convey to John G. Jager, the following lots embraced in the attachment above mentioned, namely:

Lots 15 and 16 in block 62, Denver City, east division.

This deed was recorded January 27, 1868.

Record, p. 81.

July 24th, 1868, Richard E. Whitsitt quit-claimed to Amos Steck, the undivided one-sixth part of a large number of lots, among which were the following, embraced in the attachment above mentioned, to wit:

⅙ part of lots	27, 28	in block	159,	East Division,	Denver city.
"	7, 8	"	6,	"	"
"	31	"	127,	"	"
"	25, 26	"	209,	"	"
"	5, 6	"	94,	"	"
"	29, 30	"	78,	"	"
"	11, 12	"	194,	"	"
"	21, 22	"	175,	"	"
"	7, 8	"	63,	West Division,	Denver city.
"	4	"	41,	"	"

also the one undivided one-fourth part of the following lots, embraced in said attachment:

¼ part of lots	11, 12	in block	78,	East Division,	Denver city.
"	13, 14	"	129,	"	"

This deed was recorded April 22, 1870.

Record, pp. 71–73.

On the 6th of January, 1869, said Cofield, Witter, Steck, and Whitsitt executed an instrument purporting to convey to John Roche the following lot, embraced in said attachment, namely:

Lot 4 in block 41, West Division of Denver city.

This deed was recorded January 8, 1869.

Record, p. 75.

It would appear, if exhibit 13 (Record, p. 80), was properly received in evidence (Record, pp. 53 and 79), that on January 21st, 1867, said Dudley conveyed to John Alexander the following lots, embraced in the attachment above mentioned:

Lots 5 and 6 in block 137, in East Division, Denver city.
This deed was recorded November 4, 1867.
Record, p. 80.

On the 27th March, 1868, John Alexander conveyed to Erastus F. Halleck and Charles Halleck, the following lots, embraced in the attachment above mentioned, namely:
Lots 5, 6 in block 137, in East Division, Denver city.
This deed was recorded March 30, 1868.
Record, p. 74.

Thus all the lots embraced in the writ of attachment except lots 17 and 18 in block eleven of the east division, and lot 8 in block 65, and lot 2 in block 40 of the west division of the city of Denver, are claimed to have passed to the appellees; lots 5 and 6 in block 137 to the Hallecks, by virtue of the deed of Dudley to Jno. Alexander; and the other lots to the other appellees by virtue of the deed to David H. Moffatt, Jr., by Dudley's alleged agent or attorney in fact, Charles G. Cheever.

At the December term, 1865, of said court, to wit, on the 27th of January, 1866, judgment was rendered in said suit against the said Dudley for the sum of $2,591.44 damages and $18.05 costs. After said judgment was so rendered the same was reversed by the Supreme Court of said territory at the July term thereof, 1867, and, to wit, on the 10th day of February, 1868.
Record, p. 86.

On September 12th, 1868, said Tiltons, by their attorneys, filed an amended affidavit in attachment in the suit of said Tiltons against Dudley and Ames; said affidavit was made by Albert K. Tilton, and averred that said Albert Tilton was the duly authorized agent of said Tiltons; that on the 28th of August, 1865, when said suit commenced, said Dudley and Ames were indebted to said Tiltons in the sum of $2,620.80, on an account and promissory note and for goods, wares, etc., sold and delivered and for money loaned, etc., for said Dudley and Ames; that said note was given for a part of the purchase price of said goods, etc.; that it was dated September 17, 1864, and was payable to said Tiltons four months after date and was for the sum of $2,592.80, with interest at two per cent.

per month till paid; that said account note and interest thereon was at the time said suit was commenced due and unpaid, and that the same at that time was due and unpaid; that Dudley at the time of the commencement of this suit was about to depart the territory, etc., and that Ames had departed.

(Record p. 18; see also p. 86).

On the same day, September 12th, 1868, said Tiltons, by their attorneys, filed an amended declaration in said suit against said Dudley and Ames. Said declaration, which was in trespass on the case on promises, contained two counts. In the first count the plaintiffs declared on a promissory note $2,592.80, payable in four months with interest at two per cent per month until paid, setting forth the contents of the note and attaching a copy to the declaration.

The second count was for work, labor, materials, etc., goods, wares and merchandise, money lent, laid out, etc., money had and received, interest due on money and account, balance due on settlement, with the *ad damnum* laid at $7,000. These amendments were both made by leave of the court. This declaration had attached to it the same bill of particulars that was attached to the original declaration.

Record, p. 19.
See also p. 87, fol. 225½.

On the 5th May, 1869, the Tiltons, by their attorney, filed a duly executed and authenticated power of attorney from said Dudley to Lewis B. France. Said power of attorney authorized said France to confess judgment for the amount of the note declared on—setting forth said note—with interest and costs of suit.

Record, p. 20.

On the 5th May, 1869, said France confessed judgment to the amount of $5,470.80, together with costs of suit, by filing a *cognovit*.

Record, p. 22.

November 1st, 1869.—In said suit of said Tiltons against said Dudley & Ames, said Tiltons appeared by their attorneys, and said Witter, Cofield, Whitsitt & Steck by by their several attorneys and *pro se*, and said Dudley also appeared by his attorney; and thereupon the court overruled and denied a motion, made at the last term of said court, to strike the plea of said Dudley, entered by his attorney, the said France, from the files of said suit. And the court also overruled and denied a motion and petition made by said Witter, Cofield, Whitsitt & Steck, praying to be made parties, and for leave to contest the claim of said Tiltons in said suit. And thereupon, having considered the motion made by said Tiltons on the 6th of May, 1869, the court entered judgment for said Tiltons for the sum of $5,470.80, with interest from the date of the filing of said plea, and for costs, and ordered a special execution and sale of the property attached.

Record, p. 22.

On the 17th of November, 1869, the said Tiltons sued out an execution and order of sale, for the sale of the several lots levied upon by virtue of the writ of attachment aforesaid.

Record, p. 98.

Thereupon the present suit was instituted by the appellees, against the appellants, and a temporary injunction was issued, restraining said Tiltons and David J. Cook, *the sheriff*, from selling said lots.

On the 13th of January, 1871, the court dissolved the said temporary injunction upon conditions which were not complied with by the appellees, the complainants in the court below.

(Averred in supplemental bill, record, p. 96; admitted in answer to supplemental bill, record, p. 102.)

On the 13th March, 1871, the sheriff, said Cook, sold the said lots to said Tiltons, and on the 13th of December, 1871, he executed to said Tiltons a deed for the same.

Record, pp. 96, 100, 102.

Abstract of Pleadings.

The bill in the present suit alleges the commencement of the attachment suit of the Tiltons *vs.* Dudley & Ames, and all the subsequent proceedings in that action substantially as stated.

The bill further alleges that the complainants, Cofield, Witter, Whitsitt and Steck, purchased from said Dudley all the lots concerned in this suit, except lots five (5) and six (6), in block 137, in the East division of the city of Denver, for the sum of $5,100, through David H. Moffatt, Jr., acting for and with the consent of said Dudley, and that they were originally conveyed to said Moffatt, by Charles G. Cheever as the attorney in fact of said Dudley, as a security for $2,500. That said Moffatt held these lots as a trustee subject to the payment of $2,500 and interest. That these lots were conveyed by said Moffatt on the 23d of May, and recorded the same day, and that the Tiltons and their attorneys had notice of the recording. The bill, after tracings these lots to Cofield, Witter, Whitsitt, Steck and Roche, alleges their ownership.

The bill further alleges that on the 21st day of January, 1867, Dudley conveyed to John Alexander lots 5 and 6 in block 137, in the east division of the city; that this deed was recorded, and that the Tiltons had notice of the filing for record of said deed. The bill then traces these two lots to the Hallecks, alleging their ownership, and that the appellants had notice of the filing for record of the deed from Alexander.

The bill further alleges that complainants Cofield, Witter, Whitsitt, Steck and the Hallecks purchased in good faith, without any knowledge of any claim of indebtedness in said suit on the part of the said Dudley and Ames, other than appeared in the record and papers in said suit then pending.

In the seventh clause of the amendments to this bill (see record, page 32) the complainants allege that the amendments made in the affidavit and declaration in the attachment suit changed the cause of action and enlarged the demand in said suit; that the judgment recovered was for a much greater sum than could have been recovered on the original affidavit and declaration; that this was a fraud and cheat upon their rights, and that said Tiltons had no right to make such amendments, all of which was well known to the said Tiltons.

The bill prays that so much of the judgment rendered in said attachment suit as provided for the issuing of a special execution be set aside and declared to be void; that said lots be decreed to be discharged from the lien of said judgment; and also for an injunction to restrain their sale with the general prayer for relief.

The supplemental bill, in addition to the facts alleged in the former bill, sets forth the sale by the sheriff of the county of said lots under the judgment, and their purchase by the appellants.

This supplemental bill also contains the additional prayer that said sale and the deed under it be declared null and void.

The answer admits the commencement of the attachment suit of the Tiltons *vs.* Dudley and Ames, and all the subsequent proceedings in that action substantially as stated. The answer admits that Cofield, Witter, Whitsitt and Steck pretended to purchase a portion of the real estate levied upon, but denies that Cofield, Witter, Whitsitt, Steck and Roche "were, on the twenty-third day of May, 1867, or are now," owners of any portion thereof.

The other allegations in this regard are neither admitted nor denied, but strict proof thereof is demanded.

The answer denies that the Hallecks "ever have been, or are now," the owners of or entitled to the possession of any portion of said real estate, and the answer requires strict proof of the other allegations in this regard.

The answer denies that the defendants ever had any notice of the conveyances set forth in said bill, or of the filing of the same for record.

The answer denies that the said complainants purchased in good faith, without notice of the defendants' rights and equities, and avers that the complainants had notice of the pendency of the attachment suit and the lien of the defendants.

The answer denies that the amendments in said attachment suit were for a different cause of action; denies that the amendments changed the cause of action; denies that said amendments were a fraud upon the rights of the complainants, but alleges that the said amended declaration and affidavit were for the same cause of action.

The answer to the supplemental bill admits the sale of said lots under the execution, their purchase by appellants, and the execution and delivery of the deed for the same.

The defendant Dudley filed a separate answer, but this answer was not sworn to as are the other pleadings in the case, nor was any evidence offered in its support although said Dudley was present and was called as a witness by complainants.

On the final hearing a decree was rendered in favor of the complainants annulling that portion of the judgment rendered in said attachment suit which awarded a special execution and order of sale of such of the lots levied upon by said writ of attachment as were claimed to be the property of complainants, (appellees in this court,, and perpetually enjoining the appellants from selling said lots. Also vacating and annulling the lien on said lots acquired by the appellants, by virtue of the levy of said writ of attachment and said judgment, and setting aside the sale of said lots, made by the sheriff under the execution issued on said judgment, and declaring said sale, and the deed of the sheriff executed to the appellants by virtue of said sale, to be null and void.

ASSIGNMENT OF ERRORS.

In the District Court the following errors were assigned:

First.—The court erred in rendering the decree in this case in favor of the complainants, the evidence being insufficient to sustain the case presented in the bill and supplemental bill of the complainants.

Second.—The court erred in not rendering a decree in favor of the defendants dismissing the bill, there being no case or equity presented by the bill or supplemental bill of the complainants.

Third.—The court erred in rendering said decree vacating the lien of said judgment on said lots of land attached in said suit of A. E. & C. E. Tilton against Dudley & Ames, and in setting aside that portion of said judgment awarding said execution and order of sale of said lots so attached in said suit,

and declaring the same to be null and void. Also in setting aside said sale and the deed made by the sheriff thereunder, and declaring the said sale and deed to be null and void, there being no case presented by said bill and supplemental bill, or evidence to warrant such decree.

Fourth.—The court erred in rendering said decree, because the court had no jurisdiction of the subject matter of the case presented by said bill and supplemental bill, or of the person of all the defendants.

Fifth.—The court erred in rendering a decree in favor of said complainants, there being no evidence showing or tending to show that said complainants had any right or title to the lots in question as alleged in said bill and supplemental bill.

The present suit, therefore, is in the nature of a suit at equity, seeking relief from a judgment of a court of law in favor of two of the appellants, and an injunction against the sale of certain lots by execution in pursuance of said judgment, on the general ground of fraud. Afterwards, by a supplemental bill, relief is sought in regard to the execution, which has been enforced. The general nature of the fraud is an alleged fraudulent increase of a lien effected by a certain provisional remedy of attachment subsequent to certain alleged grants of the property attached by Dudley, the defendant, in the suit commenced by attachment. The appellees in the present suit, complainants in the court below, are all grantees or sub-grantees of the defendant in the attachment suit.

Points for the Appellants.

I.

The following is submitted as the argument for the appellants in support of the first two errors, namely:

1. That the court erred in rendering the decree in this cause in favor of the complainants, the evidence being insufficient to

sustain the case presented by complainants in their said bil and supplemental bill.

2. That the court erred in not rendering a decree in favor of defendants, dismissing the said bill, there being no case or equity presented by said bill or said supplemental bill.

(1.) It must appear that some act, or some representation of the appellant's was intended to and did deceive the appellees to their detriment. In other words there must be actual fraud.

Or—

It must appear that the appellees had a right to rely upon some act or respresentation of the appellants, and that they *did* rely upon some such act or representation, and were thereby mislead ; or

That the circumstances of the case are of such a nature, and the relations of the parties are of such a character, that from motives of public policy, or from some fixed artificial policy of the law, a court of equity will deem the action of the appellants to be a constructive fraud upon the rights of the appellees, even though no fraud was intended, and the appellees do not aver nor prove that they, at the time of their purchase, were deceived by any act or representation of the appellants.

(2.) There is no allegation that any act or representation of the appellants was intended to and did mislead the appellees.

The bill in this case, as originally drawn, contained no allegations of fraud whatever, in the stating part of the complaint, and was fatally obnoxious to the well established rule of equity pleading, which requires that the facts constituting fraud must be distinctly alleged in the stating part of the bill (Story's Equity Pleading, sec. 251 and 251 ; Patton, *et al. vs.* Taylor *et al.*, 7 How., 159.) A demurrer was filed to this bill, and the complainants then by leave of the court filed an amended bill, by which it is claimed that this defect in the original bill, was obviated, and that the complaint as amended now contains a statement of facts and circumstances which amount to a constructive fraud, committed by the appellants upon the rights of the complainants. If this be so, such facts must be contained in the seventh clause of this amended bill. In this clause it is averred "that the filing of the amended affidavit and declaration changed the cause of action, and enlarged the demand in said

suit, and changed the nature of the indebtedness, said to be due from said Dudley & Ames to the appellants; that the judgment recovered upon said amended affidavit and declaration was for a much greater sum and amount than could have been recovered on the original affidavit and declaration, and was a cheat and fraud upon the rights of the complainants, all of which was well known to said Tiltons."

The question first to be determined is whether the facts contained in this clause of the amended bill, when considered in connection with the allegations of the original bill, present for the consideration of the court a case of constructive fraud. If they do not, then the bill is defective in substance, and such defects may be urged at any stage of the proceedings.

Story's Equity Pleadings, sec. 27.

It will be seen that the complainants aver in their amended bill that the facts stated therein were "a cheat and fraud upon their rights." We submit that this averment can only be regarded as a conclusion of their own, and amounts to nothing in pleading. Fraud is a conclusion of law to be determined by the court upon an examination of all the facts and circumstances averred in the bill of complaint, and cannot be deduced from the statement of conclusions by the parties.

Story's Equity Pleading, sec. 251 *a*.

Hollows *vs.* Fernie, 3d Ch. App. Cases, page 476.

There is not a particle of evidence to show that there was any intent to deceive or mislead on the part of the appellants.

a. The appellants committed no act, and made no representation from which it is possible to infer an intention to deceive or mislead the appellees.

The evidence, in this regard, is fairly summed up in the dissenting opinion. The judge who delivered that opinion said: "There is nothing to show that at the time the amendment was made the plaintiffs had any knowledge of the alienation of this property. A fraud at that time could not have been meditated against Steck & Cofield, because their connection

with the property was not then known. Nor is there anything in the record to show that the claim of the Tlltons was other than honest and just in every respect."

b. The appellants are indeed charged in the opinion of the court (Record, p. 121, fol. 317), with actual fraud. But it is apparent from the reasoning of the court that that charge is based upon the assumption that the appellants had notice of the claims of the appellees. The reasoning upon which this assumption is based is erroneous, because, First,

b. 1. The notice which the court claims that the appellants had, is really constructive in its nature. And no actual fraud or intent to deceive can be inferred from a constructive knowledge.

The fact that Cofield, Witter, Whitsitt and Steck appeared in the attachment suit before judgment was rendered, and asked to be made parties, is the only fact cited in the opinion of the court below as a ground for an inference of fraud.

b. 2. Second. The acts from which the court infer a constructive notice did not take place at a time when it would have been necessary for the appellants to have had knowledge of the claims of the appellees in order to afford any evidence of fraud, actual or constructive. This constructive notice did not exist at the time of the final judgment.

The fact is referred to that "the appellees, Cofield, Witter, Whitsitt and Steck appeared in the attachment suit before judgment was rendered, and asked to be made parties, and for leave to contest appellant's claim, but they were not allowed to do so."

And it is urged that "the fact that they appeared in the case and demanded a hearing was sufficient to put appellants upon inquiry, and if they did not ascertain the facts in regard to appellee's title, the fault was their own." The part of the record referred to is at folios 56–58.

But the important fact seems to have been lost sight of that this appearance was not made until long after the filing of the amended affidavit and declaration. Now whatever may be the rule as to an attachment being void as to prior liens or

grants where the attaching creditor has notice of such liens or grants, it would seem to be clear, both on principle and authority, that the notice must be notice at the time of the attachment, and not at the time of the subsequent judgment or execution.

Thus in a Connecticut case it was held that whether a creditor having notice of a prior defective mortgage might or might not secure his debt by an attachment of the same property, such notice given to him *after* the attachment and before the setting off by execution would have no effect.

Carter *vs.* Champion, 8 Conn., 549.

In an Illinois case it was held that an attachment was good as to a prior grant of which the deed was not recorded when the attaching creditor did not have notice of the prior unrecorded deed at the time of the attachment, though at the time of the levy of execution he did have such notice.

Martin *vs.* Dryden, 1 Gilm. (see U. S. Eq. Dig., vol. 1, page 110, § 20.)

For a very strong Massachusetts case see Coffin *vs.* Ray, 1 Met., 212.

Drake on Attachment, section 221.

See also *infra.*

c. Constructive notice cannot be inferred from the fact that some of the various deeds under which the appellees claim were recorded.

c. 1. *First.*—This is certainly true as regards the appellees Cofield, Witter, Whitsitt, Roche and Steck. These appellees claim under the Moffatt deed. The county record must first afford notice therefore of a conveyance of the lots in question by Dudley to Moffatt. It merely affords notice that Cheever, as Dudley's attorney, conveyed to Moffatt, &c. The record therefore must afford notice that Cheever had authority to convey, as Dudley's attorney, before the appellants can be affected with any constructive notice. The power of attorney from Dudley to Cheever is indeed recorded, but the doctrine of con-

structive notice does not apply to all deeds or powers of attorney which are *de facto* recorded, but only to such as are properly recorded, and this was not properly recorded.

Story's Eq., § 404, and cases cited, particularly those in note *a*.

c. 2. *Second*.—With regard to the deed from Dudley to Alexander, under whom the Hallecks claim (see *infra*).

4.—There is no allegation that the appellees had knowledge of any act or representation of the appellants, which tended to deceive them, and upon which they *did* rely, and were thereby misled.

The only allegations in this regard are those contained on page 8, folio 19, and page 32, folio 80 of the record.

5.—There is no evidence that the appellees had knowledge of any act or representation of the appellants which tended to deceive them, and upon which they *did* rely, and were thereby misled.

It is not sufficient to simply aver that the record in the attachment suit *only* afforded notice of a claim for a certain amount. The appellees must prove that they had *knowledge* that the record only afforded notice of a claim for a certain amount. They can not claim to have been misled by that of which they only had *constructive* knowledge.

The evidence on this point was fairly summed up by Belford, J., in his dissenting opinion.

Record, folios 224–327.

See Whitsitt's testimony.

Record, folios 129–172.

See Cofield's testimony.

Record, folio 174.

See Witter's testimony.

Record, folios 135–136.

6.—The circumstances of the case are not of such a nature, and the relations of the parties are not of such a character that a Court of Equity will, from motives of public policy or from some fixed artificial policy of the law, deem that the action of the appellants has worked a constructive fraud upon

the rights of the appellees in the absence of any proof of actual fraud.

(*a.*) The amendment of the affidavit and all the subsequent proceedings down to the sale were perfectly lawful *per se*, and cannot be here impeached.

(*b.*) It was the *policy* of the law of Colorado, as between defendants and and plaintiffs in attachment suits, to permit just such amendments as that now under consideration. This cannot be questioned in this suit, as the amendment was granted by leave of court. There can be no doubt that some kind of amendments were permitted in attachment suits (see opinion of majority of the judges, folio 308), and it must be assumed in this suit that either by the statute or the common law, the amendment under consideration was such as the courts of common law of Colorado permit as between the parties to the suit.

(*c.*) It must appear therefore that the relations of the appellees (as third parties) to the parties in the attachment suit and the circumstances of the case are of such a nature that from the policy of the law a court of equity will consider that a constructive fraud has been committed.

(*d.*) It is the policy of the law to regard the purchaser of property in the hands of the law, or in any way liable to the claims of parties to a pending suit with great jealousy. Anciently such purchasers were regarded as void. See cases cited in the dissenting opinion. Record, p. 122, from beginning of that page to folio 324, also folios 327–329.

(*e.*) The modern doctrine in regard to property *in custodia legis* or liable *pendente lite*, can not possibly extend further in the direction of liberality to the purchaser than to allow him to purchase *subject* to *all* the rights of the party plaintiff in the action. This includes the right to make all amendments which the law permits. Granted a right to make an amendment, and no purchaser can be allowed to interfere with it. Amendments

are allowed in order that a party may not take an *undue* advantage of a defect in pleading or a defect in procedure. In the case of an amendment by a plaintiff, the defendant should contest it if he has a case. A purchaser from a defendant can not do any more, and must do that in the same court. Otherwise a defendant who had no ground for opposing a proposed amendment could defeat the ends of justice by alienating the property liable or attached. And if this can be done in the case of one amendment, it can be done in the case of another.

(*f.*) There are no cases that apply the doctrine announced by the majority of the court below to a subsequent *purchaser*. The learned judge who delivered the dissenting opinion was unable to find any. There are none cited in the opinion of the majority of the judges. And counsel have been unable to find any.

(*g.*) The fact that in certain States it has been held that a prior attachment will be dissolved as between different attaching creditors where judgment is taken for more than the creditor is entitled to, has no bearing upon the case. Subsequent attaching creditors and subsequent purchasers stand at opposite poles as it were as regards the policy of the law to protect them.

The rights of subsequent attaching creditors do not afford any just analogies for the present case.

The rights of creditors have always been carefully guarded, and it has been the policy of the law to encourage the so-called *race of diligence*, but the policy of the law has always been against the alienation of a debtor's property, and courts of law and courts of equity have always carefully guarded the rights of creditors against injury by the alienation.

Now, at the time of the alienation by the defendant Dudley, the property in question was in the custody of the law, and, as pointed out by Belford, J., in his dissenting opinion, he who buys property while it is in the custody of the law, is not a favored purchaser, such purchases being anciently considered as void; and, although the present doctrine is that such purchasers hold the property subject to the rights of the parties in

litigation, yet it would be a novel and dangerous policy to carry this doctrine to the length that purchasers have rights in regard to property attached which the debtor, from whom they have purchased, does not have.

If this be the law, then it is the policy of the law to favor alienations by the attachment debtor, for in that way he will be enabled to take any technical advantage which he may be able to take through any trifling defect in the proceedings, as the attaching creditor will not then be enabled to exercise the right of amendment granted by statute.

It will thus be seen that subsequent attaching creditors and subsequent purchasers are almost at opposite poles, as it were, in the light in which it is and should be, the policy of the law to regard them.

That it is not the policy of the law to favor alienation of property attached, may be seen from the fact that in some of the States it is provided by statutory enactment that any sale of property which has been attached shall be void.

(*h.*) Even in such cases, the best doctrine would appear to be that advanced in Felton *vs.* Wadsworth, cited in the opinion of the court (fol. 315), that there must be fraud in fact in order that, adding to the demand without actual knowledge on the part of the attaching creditor of the existence of other liens upon the attached property, may dissolve the attachment.

(*i.*) Accordingly the court found, as indeed it was obliged to in order to decree a forfeiture, that there was *actual* knowledge on the part of the appellants of the claims of the appellees. But the reasoning upon which this finding is based is erroneous (see *supra*).

II.

ERROR FIFTH.

The court erred in rendering a decree in favor of said complainants, there being no evidence showing, or tending to show, that said complainants had any right or title to the lots in question as alleged in said bill and supplemental bill.

We have thus far considered the doctrine of public policy and the artificial policy of the law upon the hypothesis that, as averred in the bill, the complainants have a *legal* title.

How far this doctrine or this artificial policy will be changed by the fact that the appellees have no *legal* title, remains to be considered in connection with this point.

Title in all the appellees to the lots in question is alleged by the bill and the instruments by which it is sought to trace these titles are set forth.

Omitting, for the present, any consideration of the secondary evidence by which it was sought to substantiate the title of some of the appellees,—

Let us consider the admitted fact that the allegations of the bill as to the title of Cofield, Witter, Whitsitt, Roche and Steck are not sustained by the evidence.

Opinion of the Court, folio 320.

It will be remembered that these parties claim title to all the lots in question except lots five and six in block 137, in the east division of the city of Denver, and they claim, by virtue of the deed of David H. Moffatt, jr., to Witter, Cofield and Whitsitt.

It is claimed that David H. Moffatt, jr., acted as the agent or trustee of said Dudley, and that prior thereto, said Dudley, through one Cheever, as his attorney in fact, had conveyed said lots to said Moffatt by deed to secure said Moffatt in the sum of $2,500 loaned said Dudley. These said conveyances, all bearing date prior to the date of the filing of the amended affidavit and declaration, and subsequent to the date of the filing of the original affidavit and declaration in the attachment suit.

In support of these allegations a paper, which purported to

be a power of attorney from said Dudley to said Charles G. Cheever, was introduced in evidence.

Record, folio 170.

(This paper was objected to on the ground, among others, that it was not under seal.)

It is not necessary to cite authorities to the point that this power was not sufficient to authorise the execution by said Cheever to David H. Moffatt, jr., of the deed introduced as Exhibit 2 (record, folio 173).

There was also an attempt to show a *subsequent* ratification, by parol, by letters and by a power of attorney, said letters and said second power of attorney being all *subsequent* to the deed to Moffatt.

The majority of the judges in the court below therefore have very properly considered that, to have complete relief, these appellees should have brought their bill for a specific performance of the contract with Dudley making appellants parties thereto.

But they have treated these parties as possessing an equity which would entitle them to the relief sought.

It is very difficult to see how this bill can be sustained, as to these appellees, in view of the fact that they have no legal title.

In the case of Boone *vs.* Childs, 10 Peters, it was held that an allegation of a contract to convey could not be altered by a deed introduced as proof of an actual conveyance, on the ground that the *probata* and the *allegata* must correspond. And the distinction between a contract to convey and a deed was strongly emphasized in this respect, that a *bona fide* purchaser without notice would be protected under a deed when the grantor had notice, but that this doctrine would not apply under a contract to convey.

The doctrine in regard to one who claims to be a *bona fide* purchaser without notice has been held, in the cases of Valtier *vs.* Hind, 7 Peters, 271, and Villa *vs.* Rodrigues, 12 Wall., 338, to apply only to the purchaser of the legal estate.

There would seem, therefore, to be an utter lack of proof as regards these important allegations in the bill.

But when we consider the relations of the parties in the present suit the reason of this rule will be still more apparent.

The right to make amendments in suits commenced by attachment is granted by statute, and the amendment in the attachment suit which we are now considering was made by leave of the court. Now, if the amended affidavit and declaration in the attachment suit can be sustained as against these appellees, namely, the appellees claiming under the Moffatt deed, Cofield, Witter, Whitsitt, Roche and Steck, as an affidavit and declaration then for the first time filed, it is difficult to see how any injury can have been done to *these* appellees by the amendment.

Now, it is clear upon authority, that the Tiltons, at the time of the filing of the amended affidavit and declaration, could in the first instance, have filed an affidavit in attachment and a declaration, to exactly the same purport, without having the rights which they would acquire over the property attached by so doing, in any way curtailed by the claims which these appellants (under the Moffatt deed) had over the property at that time.

Thus in an Illinois case (Martin *vs.* Dryden, 1 Gilm), the doctrine was laid down that an attaching creditor who levies his attachment without notice of a prior unrecorded deed, either actual or constructive, acquires a lien which, if perfected by judgment, execution, sale and deed, will hold the legal estate as against a purchaser in the prior unrecorded deed, though at the time of the levy of the execution and sale he has notice of the prior deed.

In a Massachusetts case (Coffin *vs.* Ray, 1 Met., 212), the facts were as follows: A conveyed to B, but the deed was not recorded; A afterwards conveyed to C the same property and it was attached in his (C's) hands. The attaching creditor, however, did not record the attachment in accordance with the requirement of the Massachusetts statute. It was held, however, that as this requirement was for the purpose of giving notice to *subsequent* creditors and purchasers, B was not injured by the non-compliance therewith on the part of the attaching creditor.

It was also held that the attachment held the property as against the title of B, the attaching creditor having no notice

of the unrecorded deed to B at the time of the attachment, although he did at the time of the execution.

See also the Connecticut case of Carter *vs.* Champion, cited *supra.*

Prince *v.* Bartlett, 8 Cranch, 431.

Thus we have the authority of three different States, for saying that when a *subsequent* attaching creditor has no notice, actual or constructive, of the prior *legal* interests of mortgagees and purchasers in the property attached, *at the time of the attachment*, his interest is not affected by such prior interests of purchasers and mortgagees.

Now, at the time of the filing of the amended affidavit in the attachment suit, Cofield Witter, Whitsitt Steck, and Roche, had no legal title to the lots in question. They could go into a court of equity and ask for a a specific performance of a contract to convey, but they had no *legal* interest in the property attached. As far as their interests are concerned, therefore, the Tiltons could have *commenced* their attachment at the date when they filed their amended affidavit for the same amount and for the same cause of action. For the Tiltons, or their attorneys, had no notice of even the equitable claims of these appellees *at the time of the filing of the amended affidavit.* Actual notice cannot be tortured out of any construction of the evidence. Constructive notice they did not have; for, although the power of attorney from Dudley to Cheever was recorded, it should not have been recorded, as it was not executed under seal. The doctrine as to the registration of deeds being constructive notice does not apply to all deeds and conveyances which may be *de facto* registered, but only to such as are authorized and required by law to be registered, and are duly registered in compliance with law.

Story's Eq. Jurisp., section 404, and cases cited, particularly those in note (*a*).

How then can the power of amendment, granted by statute, allowed in this case by leave of the court, be exercised when a plaintiff, in an attachment suit, who has no notice, actual or constructive, of a claim (*not a legal interest*) of some third person, forfeits all his rights by exercising the right of amendment?

We submit that the evidence offered to substantiate the title of the Hallecks, and also some of the other complainants, is not sufficient for that purpose.

Among others, secondary evidence of a deed from Dudley to Alexander, for lots 5 and 6 in block 137, in the east division of the city of Denver, was offered, and objected to by the appellants (fol. 138). The only foundation laid for the introduction of this secondary evidence was the affidavit, exhibit 12.

Record, folio 205.

This is an affidavit sworn to by the appellees, Cofield, Witter, Whitsitt and the Hallecks, who depose and say: "That within the last ten days they, and each of them, have made diligent search among *their* papers, in the place where they usually keep papers, and have not been able to find" certain deeds enumerated, and among them said deed from Dudley to Alexander.

We submit that an affidavit of search of said Hallecks among *their* papers for a deed from Dudley to Alexander, in absence of any deposition that they had ever had such deed in their possession, or had ever tried to obtain it from said Alexander, is not sufficient to lay the ground for proof by copy. The point is not unimportant when we consider the irregularity which the record displays as to one of the originals introduced in evidence, and improperly recorded in the office of the county clerk.

See Exhibit, Record, folios 169–173.

The Hallecks, however, have joined in this suit with parties who have no legal title; and it is not possible for the court to give the same relief under the same bill to a collection of individual complainants, some of whom claim a legal title, while others have an equitable title only, and the respective titles relating to different lots of land.

III.

The decree of the court below should be reversed and the case remanded, with directions to dismiss the bill and supplemental bill.

IV.

If the bill is not ordered to be dismissed, but is retained for the relief sought, the decree of this court should direct the court below to make a decree requiring the appellees to pay to the appellants the amount for which the appellants attached the lots in question, before the amount of the attachment was allowed, namely, $2,620.85, with interest.

GEO. TICKNOR CURTIS,
Of Counsel for Appellants.

Supreme Court of the United States.

No. 88, October Term, 1876.

ALFRED E. TILTON AND CHARLES E. TILTON,
Appellants,

v.

JOSEPH B. COFIELD, DANIEL WITTER, RICHARD E. WHITSITT, AMOS STECK, JOHN ROCHE, E. F. HALLECK AND CHARLES HALLECK,
Appellees.

SUPPLEMENTAL
BRIEF FOR APPELLANTS.

GEO. TICKNOR CURTIS,
Of Counsel.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON ST.

1876.

Attachment Laws of Colorado Territory.

SECTION 1. "If any creditor, his agent or attorney, shall file an affidavit in the office of the clerk of the District Court of any county in this Territory, setting forth that any person is indebted to such creditor in a sum exceeding twenty dollars, stating the nature and amount of said indebtedness, as near as may be, and that such debtor has departed or is about to depart from this Territory, or is about to remove his property from this Territory to the injury of such creditor, or that such creditor conceals," etc. * * * "It shall be lawful for such clerk to issue a writ of attachment directed to the sheriff of the county, returnable like other writs, commanding him to attach the lands, tenements, goods, chattels, rights, credits, moneys and effects of said debtor of every kind, or so much thereof as will be sufficient to satisfy the claim sworn to with interest and costs of suit, in whose hands or possession the same may be found."

SECTION 8. "No writ of attachment shall be quashed nor the property taken thereon restored, any garnishee discharged, nor any bond by him given canceled, nor any rule entered against the sheriff discharged on account of any insufficiency of the original affidavit, writ of attachment or attachment bond if the plaintiff or some credible person for him shall cause a legal and sufficient affidavit or attachment bond to be filed,

or the writ to be amended in such time and manner as the courts shall in their discretion direct, and in that case the cause shall proceed as if such proceedings had been originally sufficient."

Revised Statutes Colorado, pp. 52 and 55.

The following is submitted as the argument for the appellants in support of the third and fourth errors, namely :

" The court erred in rendering said decree vacating the lien of said judgment on said lots of land attached in said suit of A. E. & C. E. Tilton *against* Dudley & Ames, and in setting aside that portion of said judgment awarding said execution and order of sale of said lots so attached in said suit, and declaring the same to be null and void. Also in setting aside said sale and the deed made by the sheriff thereunder, and declaring the said sale and deed to be null and void, there being no case presented by said bill and supplemental bill, or evidence to warrant such decree."

" The court erred in rendering said decree, because the court had no jurisdiction of the subject matter of the case presented by said bill and supplemental bill, or of the person of all the defendants."

1. The decree in this case in effect *restores* the property in all the lots except the two which the Hallecks claim *to Dudley, the defendant in the attachment suit*, and is in plain violation of the statute. The parties under the Moffatt deed hold what is of the nature of an executory contract.

Bingham on Sale of Real Property, pp. 13–17.

Hay *vs.* Haswell, 6 Adolph & El., 265.

And it is undisputed that Cofield, Witter, Whitsitt and Steck, have no legal title, and that the

legal title would, by the decree, be in Dudley, the defendant in attachment.

The statute provides that no writ of attachment shall be quashed, *nor the property taken thereon restored*, &c., if the plaintiff, or some credible person for him, shall cause a *legal and sufficient affidavit or attachment bond to be filed, or the writ to be amended in such time and manner as the courts shall in their discretion direct, and in that case the cause shall proceed as if such proceedings had been originally sufficient.*

The first section of the act requires, among other things, that the creditor or his attorney should state the nature and amount of his indebtedness, as near as may be.

That is necessary, in order that the affidavit may be sufficient to justify the issuance of the writ.

At the time of the filing of the original affidavit, the amount and nature of the debt were sufficiently stated, because the note could have been introduced under the common counts in the declaration.

Drake on Attachments, section 286.

Three years later, when the interest had accumulated on the note, the affidavit may not have sufficiently described the amount of the indebtedness, and it was perfectly proper for the court, therefore, to allow an amendment, sufficiently describing the amount of the indebtedness, and because it has done so the court below has by its decree *restored* the property to Dudley, the defendant in the attachment suit.

The amendment of the declaration was, of course, within the discretion of the court.

The note was given for a balance due on account. This account is identical with the bill of particulars filed with both the original and the amended declarations, excepting that the credit

for an over charge should have been omitted, as the items in the bill of particulars were corrected.

Exhibits L, M, N, O, Record, pp. 84, 87, 89.
Davidson's testimony, Record, pp. 46, 47. pp. 61–62.
Tilton's testimony, Record, pp. 59, 61.
Charles' " " pp. 54, 55.

But as the interest on the note was of a higher rate *per cent.* than the usual rate, the original affidavit did not, after the lapse of time, state the amount of indebtedness "*as near as may be.*"

2. It was error in the court below to set aside the judgment of a court of law.

There is no pretence that the District Court did not have jurisdiction in the attachment suit. The only ground alleged for setting aside the judgment is, that the cause of action was changed, and the demand was enlarged by the amendments, and that this was a constructive fraud upon the rights of the appellees. Moreover, the jurisdiction of the court was recognized by the appearance of the defendant Dudley, and by the appearance of Cofield, Whitsitt, Witter, and Steck, who asked leave to *contest*.

There was no actual fraud on the part of the appellants (*see supra*), and a Court of Equity can not set aside the judgment of a court of law, for error.

Walker *vs.* Robbins, 14, How., 584.
Tully *vs.* Warren, 5 How., 141.
Humphreys *vs.* Legget, 9 How., 297.
Hendrickson *vs.* Hinckley, 17 How., 443.
Story's Equity Jurisdiction, Sec. 887.

3. At any rate, this court cannot interfere with the judgment rendered by the district court on behalf

of the parties in this suit, on the ground that it was an error in the District Court to allow the amendment.

"No person will be permitted to proceed in equity against a judgment or decree to which he was not a party, and which did not at its rendition affect any of his rights."

Freeman on Judgments, section 512.

If the amended affidavit and declaration would be good as an original affidavit from the time of its filing, these parties were not affected in any of their rights by the rendition of the judgment of the District Court. (*See supra.*) They are merely attempting to take advantage of an error, *if it be an error*, of a court of law, in allowing an amendment instead of insisting upon the filing of an affidavit and declaration, and the issuing of a writ of attachment, *de novo*, when they could not possibly have objected under the circumstances, if the Tiltons had (with their knowledge) filed an affidavit and declaration, and had sued out a writ of attachment, *de novo*, at the time when they filed their amended affidavit and declaration, and this they attempt to do after judgment has been rendered.

4. The parties under the Moffat deed hold what is of the nature of an executory contract. Until they have made their *equitable claim* a *legal right*, they will not be listened to in a court of equity.

Freeman on Judgments, section 512.
Wiggins *vs.* Armstrong, 2 Johnson, ch. 144.
Angel *vs.* Draper, 1 Vern, 399.
Shirley *vs.* Watts, 3 Atk., 200.

5. Moreover the appellees cannot ask the protection of this court, as they had a remedy at law.

GEO. TICKNOR CURTIS,
Of Counsel for Appellants.

IN THE

SUPREME COURT

OF THE UNITED STATES,

Of the October Term, 1876.

An Appeal from the Decree of the Supreme Court of Colorado.

A. E. & C. E. TILTON,
versus
JOSEPH B. COFIELD,
and others.

In Equity.

The facts disclosed in the testimony of the master show that the appellants sued out an attachment against the property of one Dudley, in the District Court of Arapahoe County, Colorado, for the sum of $2,591.44 in August, A. D. 1865, and whilst the cause was pending, Dudley sold the attached property now in question, to the appellants.

After the sale of the attached property by Dudley to complaintants, to-wit, on the 12th of September, 1868, appellants made their application to the District Court, and obtained leave to amend their original affidavit and bond in attachment, and also their declaration, without any notice to Dudley, the defendant, and the amendment was accordingly made.

The original affidavit in attachment, alleged an indebtedness of Dudley & Ames, of $2,620.80, upon an account for goods sold

and delivered, and the declaration laid the ad damnum at $3,000.

The amended affidavit averred the indebtedness to be in the same sum as the original affidavit, and further alleged it to be upon *an account* and promissory note, and that the note was made for the sum of $2,592.80, dated 17th September, 1864, bearing interest at 2 per cent. per month, from date until paid. The amended declaration set out the common counts, laying the ad damnum at $7,000.

The equity of the complainants' bill, rests wholly upon the wrong and injury sought to be committed upon the appellees, by seeking to compel payment of the enlarged demand, out of the attached property, bought by appellees from Dudley.

The judgment of the District Court against Dudley, upon the state of pleadings at the time of the purchase by appellees of the attached property, could not have exceeded the sum of $3,000, the amount of the original ad damnum. The judgment of the Court upon the amended pleadings, was for the sum of $5,652.80, upon the confession of Dudley, made after the sale of the attached property to the complainants.

It is not denied that the appellees took the attached property with notice of the demand of the Tiltons against Dudley, nor is it denied that the Court might amend the pleadings as well as the affidavit, when there was an *insufficiency* in them, so far as Dudley himself was concerned, he having been served with process. And it is further conceded that, Dudley having confessed judgment upon the amended pleadings and proceedings, could not consistently find fault with them. But the question is whether such an amendment of the affidavit and declaration could be made by the plaintiffs in the proceedings against Dudley, as to wrong and injure the appellees.

The conveyance to the appellees, called a deed, having been made by Dudley's attorney in fact, in virtue of a power of attorney not having a seal is wanting in the elements of a legal conveyance, and may be held to be only an executory contract, or agreement.

It further appears that Cofield, Witter, Whitsitt, and Steck appeared in the attachment suit before judgment was had by appellants against Dudley, and asked leave to contest this claim, which fact put the appellants properly upon inquiry as to the nature of the appellees' claim.

In addition, it appears that after obtaining the judgment against Dudley, and an award of a special execution provided in attachment cases, and after the filing of the complainant's bill, appellees proceeded to sell all the attached property for the enlarged demand against Dudley and became the purchasers themselves.

It was competent for appellees to have remitted the excess of their claim ripened into a judgment for more than double their demand, to the original amount claimed, with interest at 10 per cent. (our statutory interest), and sold the attached property for the same, leaving the excess to stand as a personal judgment against Dudley.

The appellants were put upon inquiry of appellees' purchase by their appearance in the attachment suit, before judgment, but afterwards and before the sale, had full knowledge by complainant's bill, (to which they appeared) of the wrong meditated and afterwards executed, against the property of appellees.

In any event it does not seem to be just that the appellants could be permitted to take the chances of committing a fraud upon the owners of the attached property, by the sale of the same, for the enlarged demand, and failing, be remitted to the collection of the original demand. The penalty put upon all persons attempting a fraud, is a loss of their whole demand, as against the person wronged, and it would seem upon principle, that it makes no difference whether the attempt be one of constructive or meditated injury. Here it was meditated.

The principle extracted from all the cases cited in appellees' brief, seems to be that any demand against a defendant, introduced in amendment which enlarged the claim against a defendant in attachment, after the levy of a subsequent attachment, is a fraud upon the subsequent attaching creditor and vacates the prior attachment. It is not perceived that any distinction in prin-

ciple exists between subsequent attaching creditors and subsequent bona fide purchasers. To the extent of the residue of the estate after payment of the attachment lien, the interest of the subsequent purchaser and subsequent attaching creditor, if the latter's claim absorbs the whole estate, are exactly the same, and in other cases differs only in degree and not in kind.

It may be argued that purchasers *pendente lite* take the estate subject to any judgment or decree which may in any event be rendered in the action, but it is respectfully suggested that this rule must be limited to such a judgment or decree as it is competent for the Court to render upon the pleadings as they stood at the time of the purchase. That it is so limited, would seem clear from the fact that appellant's demand against Dudley was upon oath, their pleadings were written by their attorneys, and are supposed to state their claim as strongly as it existed against him, and after such oath and pleading, it would appear extraordinary that we should be held to take notice or even to make inquiry of an enlarged claim in their hands against Dudley, in the face of their oath and pleadings.

But the appellees answer that although they were bound to take notice of all the proceedings in the litigation between the Tiltons and Dudley and Ames, they had no notice of the promissory note upon which Dudley confessed judgment, which was a different demand from that in the original affidavit and declaration. Nor had they any notice that Dudley was indebted to the appellants in any sum whatever. They had notice of the *demand* of appellants against Dudley for moneys due on a book account from Dudley & Ames, which Dudley resisted from August 1865, the time of the commencement of the action, until the May term of the District Court, in the year 1869, nearly four years thereafter, and two years after Dudley had conveyed his interest in the attached property, to the complainants, when Dudley confessed judgment on the promissory note.

The confession of judgment by Dudley, after four years of litigation and after he had sold his interest in the attached property, raises such a presumption of collusion between him and the appellants, as requires them to explain the sudden change

of action on his part, which has not been done. It will be remembered that it was the note of Dudley & Ames, made by Ames, which there is no evidence Dudley ever saw or heard of, until his confession, when he had no longer any interest in the property. It is not questioned that the judgment upon confession is good as a personal judgment against Dudley, but it is claimed that the demand is a new and original demand upon a new and different contract and cause of action, the former cause of action, upon the account having been abandoned. Nor does it appear in the evidence, that the appellees had any knowledge of the promissory note, or of its tenor, but the whole record shows, of which appellees had notice, that Dudley resisted the original demand for nearly two years before his sale to the appellees, from which the presumption may fairly be raised that the appellees bought the property, subject to the defense which Dudley would interpose, or was expected to interpose, until the collusive confession of judgment, in May, 1869, to the injury of the rights of the appellees.

Standing upon the simple facts disclosed in the record, of Dudley's resistance to the original claim for nearly four years, with the usual expense of defense during that time, and his confession for a sum twice the amount originally claimed after all his interest in the attached property had been sold, leaves no room to doubt his collusion with appellants to injure and defraud the complainants. There is no evidence showing what was the nature of the defense of Dudley to the original claim of the appellants, and therefore it is improper to speak of it, but the record discloses that there was a resistance to the demand as is herein stated.

It has been claimed that inasmuch as the complainants came into equity they must offer to do equity. That is, that the complainants having notice of the original demand of appellants in their suit against Dudley by the record, cannot ask equity without offering to pay the original claim to appellants. If appellants had no legal right to the lien by attachment upon their enlarged demand, but voluntarily abandoned the original lien and sought to wrong appellees by the forms of law and by collusion

or agreement with Dudley, their judgment against the attached property is void as against the purchasers of the attached estate. If, as the authorities hold, an enlarged demand in attachment makes the lien void as to subsequent attaching creditors, and upon the same principle against purchasers also, it was their own act and they must bear the consequences, otherwise an attempt to defraud in such case can have no penalty. The prayer of the bill is to remove the lien of the judgment upon the attached property and set aside the sale, and only asks that to be done which, neither at law nor in equity, they had any right to have and which they voluntarily abandoned by their own act.

As by the late rule of Court, the opinions of the Supreme Court of Colorado are made part of the transcript in this cause, the appellees respectfully refer the Court to the opinion of Chief Justice Hallett for further argument in their behalf.

AMOS STECK,

Solicitor for Appellees.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

OF THE OCTOBER TERM, 1876.

An Appeal from the decree of the Supreme Court of Colorado.

A. E. & C. E. TILTON,
VERSUS
JOSEPH B. COFIELD, And Others,
} IN EQUITY.

AMOS STECK,
Solicitor for Appellees.

57 Missouri 489
45 Indiana 245
23 Iowa 167
26 Ohio St.
7 Cush.